

1 15A NCAC 07H .0104 is repealed as published in 36:14 NCR 1219 as follows:

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3 **15A NCAC 07H .0104 APPLICATION OF EROSION RATE SETBACK FACTORS**

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5 *History Note: Authority G.S. 113A-107; 113A-113; 113A-124;*

6 *Eff. September 15, 1979;*

7 *Amended Eff. August 1, 2010; April 1, 2004; April 1, 1997; April 1, 1995; May 1, 1990; November*

8 *1, 1988; September 1, 1988;*

9 *Readopted Eff. July 1, 2020;*

10 *Repealed Eff. July 1, 2022.*

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0208

**DEADLINE FOR RECEIPT: Friday, June 10, 2022**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Subparagraph (a)(4), can a reference be added to where “primary nursery areas” are described by MFC or WRC?*

*In Part (b)(2)(A), can more specificity be added to define what a “sufficient” “distance” would be?*

*Parts (b)(2)(D) and (F) should end in semi-colons, not periods.*

*Part (b)(3)(D), what is a “significant adverse impact”? Is this defined anywhere?*

*Subparagraph (b)(5), add oxford commas after “haulout facilities” and “temporary docking”.*

*Part (b)(5)(I), reword to remove the parenthesis.*

*Part (b)(6)(D), use “may” instead of “can”.*

*Subpart (b)(6)(G)(iii), add an oxford comma after “canals”.*

*Part (b)(6)(I), how or where can “copies of the diagram” “be obtained from the Division of Coastal Management”?*

*Part (b)(10)(F), reword to remove the parenthesis.*

*Part (b)(10)(J), add an oxford comma after “public service”.*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: June 6, 2022

1 15A NCAC 07H .0208 is amended as published in 36:13 1105-1116 as follows:

2  
3 **15A NCAC 07H .0208 USE STANDARDS**

4 (a) General Use Standards

5 (1) Uses that are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and  
6 public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads,  
7 factories, and parking lots are examples of uses that are not water dependent. Uses that are water  
8 dependent include: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging,  
9 bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring  
10 pilings, navigational channels, access channels and drainage ditches;

11 (2) Before being granted a permit, the CRC or local permitting authority shall find that the applicant  
12 has complied with the following standards:

13 (A) The location, design, and need for development, as well as the construction activities  
14 involved shall be consistent with the management objective of the Estuarine and Ocean  
15 System AEC (Rule .0203 of this subchapter) and shall be sited and designed to avoid  
16 significant adverse impacts upon the productivity and biologic integrity of coastal  
17 wetlands, shellfish beds, submerged aquatic vegetation as defined by the Marine Fisheries  
18 Commission, and spawning and nursery areas;

19 (B) Development shall comply with State and federal water and air quality rules, statutes and  
20 regulations;

21 (C) Development shall not cause irreversible damage to documented archaeological or historic  
22 resources as identified by the N.C. Department of Cultural resources;

23 (D) Development shall not increase siltation;

24 (E) Development shall not create stagnant water bodies;

25 (F) Development shall be timed to avoid significant adverse impacts on life cycles of estuarine  
26 and ocean resources; and

27 (G) Development shall not jeopardize the use of the waters for navigation or for other public  
28 trust rights in public trust areas including estuarine waters.

29 (3) When the proposed development is in conflict with the general or specific use standards set forth in  
30 this Rule, the CRC may approve the development if the applicant can demonstrate that the activity  
31 associated with the proposed project will have public benefits as identified in the findings and goals  
32 of the Coastal Area Management Act, that the public benefits outweigh the long range adverse  
33 effects of the project, that there is no reasonable alternate site available for the project, and that all  
34 reasonable means and measures to mitigate adverse impacts of the project have been incorporated  
35 into the project design and shall be implemented at the applicant's expense. Measures taken to  
36 mitigate or minimize adverse impacts shall include actions that:

37 (A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;

- (B) restore the affected environment; or
- (C) compensate for the adverse impacts by replacing or providing substitute resources.

(4) "Primary nursery areas" are defined as those areas in the estuarine and ocean system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly early juvenile stages. Primary nursery areas are designated and described by the N.C. Marine Fisheries Commission (MFC) and by the N.C. Wildlife Resources Commission (WRC);

(5) "Outstanding Resource Waters" (ORW) are defined as those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission (EMC). In those estuarine waters and public trust areas classified as ORW by the EMC no permit required by the Coastal Area Management Act shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC, or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site specific information, degrade the water quality or outstanding resource values; and

(6) Beds of "submerged aquatic vegetation" (SAV) are defined as those habitats in public trust and estuarine waters vegetated with one or more species of submergent vegetation. These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the Marine Fisheries Commission. Any rules relating to SAVs shall not apply to non-development control activities authorized by the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et seq.).

(b) Specific Use Standards

(1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined by the MFC, or areas of coastal wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:

(A) Navigation channels and canals may be allowed through fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and if there is no reasonable alternative that would avoid the wetland losses;

(B) All dredged material shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or coastal wetlands;

(C) Dredged material from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no significant, long-term wetland impacts. Under no circumstances shall

1 dredged material be placed on regularly flooded wetlands. New dredged material disposal  
2 areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10);

3 (D) Widths of excavated canals and channels shall be the minimum required to meet the  
4 applicant's needs but not impair water circulation;

5 (E) Boat basin design shall maximize water exchange by having the widest possible opening  
6 and the shortest practical entrance canal. Depths of boat basins shall decrease from the  
7 waterward end inland;

8 (F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting  
9 waters;

10 (G) Construction of finger canal systems are not allowed. Canals shall be either straight or  
11 meandering with no right angle corners;

12 (H) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design  
13 may include shoreline stabilization, vegetative stabilization, or setbacks based on soil  
14 characteristics; and

15 (I) Maintenance excavation in canals, channels and boat basins within primary nursery areas  
16 and areas of submerged aquatic vegetation as defined by the MFC shall be avoided.  
17 However, when essential to maintain a traditional and established use, maintenance  
18 excavation may be approved if the applicant meets all of the following criteria:

19 (i) The applicant demonstrates and documents that a water-dependent need exists for  
20 the excavation;

21 (ii) There exists a previously permitted channel that was constructed or maintained  
22 under permits issued by the State or Federal government. If a natural channel was  
23 in use, or if a human-made channel was constructed before permitting was  
24 necessary, there shall be evidence that the channel was continuously used for a  
25 specific purpose;

26 (iii) Excavated material can be removed and placed in a disposal area in accordance  
27 with Part (b)(1)(B) of this Rule without impacting adjacent nursery areas and  
28 submerged aquatic vegetation as defined by the MFC; and

29 (iv) The original depth and width of a human-made or natural channel shall not be  
30 increased to allow a new or expanded use of the channel.

31 (2) Hydraulic Dredging

32 (A) The terminal end of the dredge pipeline shall be positioned at a distance sufficient to  
33 preclude erosion of the containment dike and a maximum distance from spillways to allow  
34 settlement of suspended solids;

35 (B) Dredged material shall be either confined on high ground by retaining structures or  
36 deposited on beaches for purposes of renourishment if the material is suitable in accordance  
37 with the rules in this Subchapter, except as provided in Part (G) of this Subparagraph;

- 1 (C) Confinement of excavated materials shall be landward of all coastal wetlands and shall  
2 employ soil stabilization measures to prevent entry of sediments into the adjacent water  
3 bodies or coastal wetlands;
- 4 (D) Effluent from diked areas receiving disposal from hydraulic dredging operations shall be  
5 contained by pipe, trough, or similar device to a point waterward of emergent vegetation  
6 or, where local conditions require, below normal low water or normal water level.
- 7 (E) When possible, effluent from diked disposal areas shall be returned to the area being  
8 dredged;
- 9 (F) A water control structure shall be installed at the intake end of the effluent pipe.
- 10 (G) Publicly funded projects shall be considered by review agencies on a case-by-case basis  
11 with respect to dredging methods and dredged material disposal in accordance with  
12 Subparagraph (a)(3) of this Rule; and
- 13 (H) Dredged material from closed shellfish waters and effluent from diked disposal areas used  
14 when dredging in closed shellfish waters shall be returned to the closed shellfish waters.
- 15 (3) Drainage Ditches
- 16 (A) Drainage ditches located through any coastal wetland shall not exceed six feet wide by four  
17 feet deep (from ground surface) unless the applicant shows that larger ditches are  
18 necessary;
- 19 (B) Dredged material derived from the construction or maintenance of drainage ditches through  
20 regularly flooded marsh shall be placed landward of these marsh areas in a manner that  
21 will insure that entry of sediment into the water or marsh will not occur. Dredged material  
22 derived from the construction or maintenance of drainage ditches through irregularly  
23 flooded marshes shall be placed on non-wetlands wherever feasible. Non-wetland areas  
24 include relic disposal sites;
- 25 (C) Excavation of new ditches through high ground shall take place landward of an earthen  
26 plug or other methods to minimize siltation to adjacent water bodies; and
- 27 (D) Drainage ditches shall not have a significant adverse impact on primary nursery areas,  
28 productive shellfish beds, submerged aquatic vegetation as defined by the MFC, or other  
29 estuarine habitat. Drainage ditches shall be designed so as to minimize the effects of  
30 freshwater inflows, sediment, and the introduction of nutrients to receiving waters. Settling  
31 basins, water gates and retention structures are examples of design alternatives that may be  
32 used to minimize sediment introduction.
- 33 (4) Nonagricultural Drainage
- 34 (A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow  
35 are minimized to both surface and ground water;
- 36 (B) Drainage ditches shall provide for the passage of migratory organisms by allowing free  
37 passage of water of sufficient depth; and

1 (C) Drainage ditches shall not create stagnant water pools or changes in the velocity of flow.

2 (5) Marinas. "Marinas" are defined as any publicly or privately owned dock, basin or wet boat storage  
3 facility constructed to accommodate more than 10 boats and providing any of the following services:  
4 permanent or transient docking spaces, dry storage, fueling facilities, haulout facilities and repair  
5 service. Excluded from this definition are boat ramp facilities allowing access only, temporary  
6 docking and none of the preceding services. Expansion of existing facilities shall comply with the  
7 standards of this Subparagraph for all development other than maintenance and repair necessary to  
8 maintain previous service levels. Marinas shall comply with the following standards:

9 (A) Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging)  
10 and shall not disturb shellfish resources, submerged aquatic vegetation as defined by the  
11 MFC, or wetland habitats, except for dredging necessary for access to high-ground sites.  
12 The following four alternatives for siting marinas are listed in order of preference for the  
13 least damaging alternative; marina projects shall be designed to have the highest of these  
14 four priorities that is deemed feasible by the permit letting agency:

15 (i) an upland basin site requiring no alteration of wetland or estuarine habitat and  
16 providing flushing by tidal or wind generated water circulation or basin design  
17 characteristics;

18 (ii) an upland basin site requiring dredging for access when the necessary dredging  
19 and operation of the marina will not result in significant adverse impacts to  
20 existing fishery, shellfish, or wetland resources and the basin design shall provide  
21 flushing by tidal or wind generated water circulation;

22 (iii) an open water site located outside a primary nursery area which utilizes piers or  
23 docks rather than channels or canals to reach deeper water; and

24 (iv) an open water marina requiring excavation of no intertidal habitat, and no  
25 dredging greater than the depth of the connecting channel.

26 (B) Marinas that require dredging shall not be located in primary nursery areas nor in areas  
27 which require dredging through primary nursery areas for access. Maintenance dredging  
28 in primary nursery areas for existing marinas shall comply with the standards set out in  
29 Part (b)(1)(I) of this Rule;

30 (C) To minimize coverage of public trust areas by docks and moored vessels, dry storage  
31 marinas shall be used where feasible;

32 (D) Marinas to be developed in waters subject to public trust rights (other than those created  
33 by dredging upland basins or canals) for the purpose of providing docking for residential  
34 developments shall be allowed no more than 27 square feet of public trust areas for every  
35 one linear foot of shoreline adjacent to these public trust areas for construction of docks  
36 and mooring facilities. The 27 square feet allocation does not apply to fairway areas

1 between parallel piers or any portion of the pier used only for access from land to the  
2 docking spaces;

3 (E) To protect water quality in shellfishing areas, marinas shall not be located within areas  
4 where shellfish harvesting for human consumption is a significant existing use or adjacent  
5 to such areas if shellfish harvest closure is anticipated to result from the location of the  
6 marina. In compliance with 33 U.S. Code Section 101(a)(2) of the Clean Water Act and  
7 North Carolina Water Quality Standards (15A NCAC 02B .0200) adopted pursuant to that  
8 section, shellfish harvesting is a significant existing use if it can be established that shellfish  
9 have been regularly harvested for human consumption since November 28, 1975 or that  
10 shellfish are propagating and surviving in a biologically suitable habitat and are available  
11 and suitable for harvesting for the purpose of human consumption. The Division of Coastal  
12 Management shall consult with the Division of Marine Fisheries regarding the significance  
13 of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that  
14 have been harvested or are available for harvest in the area where harvest will be affected  
15 by the development;

16 (F) Marinas shall not be located without written consent from the leaseholders or owners of  
17 submerged lands that have been leased from the state or deeded by the State;

18 (G) Marina basins shall be designed to promote flushing through the following design criteria:

19 (i) the basin and channel depths shall gradually increase toward open water and shall  
20 never be deeper than the waters to which they connect; and

21 (ii) when possible, an opening shall be provided at opposite ends of the basin to  
22 establish flow-through circulation;

23 (H) Marinas shall be designed so that the capability of the waters to be used for navigation or  
24 for other public trust rights in estuarine or public trust waters are not jeopardized while  
25 allowing the applicant access to deep waters;

26 (I) Marinas shall be located and constructed so as to avoid adverse impacts on navigation  
27 throughout all federally maintained channels and their boundaries as designated by the US  
28 Army Corps of Engineers. This includes mooring sites (permanent or temporary); speed or  
29 traffic reductions; or any other device, either physical or regulatory, that may cause a  
30 federally maintained channel to be restricted;

31 (J) Open water marinas shall not be enclosed within breakwaters that preclude circulation  
32 sufficient to maintain water quality;

33 (K) Marinas that require dredging shall provide areas in accordance with Part (b)(1)(B) of this  
34 Rule to accommodate disposal needs for future maintenance dredging, including the ability  
35 to remove the dredged material from the marina site;



- 1 (L) Marina design shall comply with all applicable EMC requirements (15A NCAC 02B .0200)  
2 for management of stormwater runoff. Stormwater management systems shall not be  
3 located within the 30-foot buffer area outlined in 15A NCAC 07H .0209(d);
- 4 (M) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and  
5 listing the availability of local pump-out services;
- 6 (N) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting  
7 will be done over dry land with collection and containment devices that prevent entry of  
8 waste materials into adjacent waters;
- 9 (O) All marinas shall comply with all applicable standards for docks and piers, shoreline  
10 stabilization, dredging and dredged material disposal of this Rule;
- 11 (P) All applications for marinas shall be reviewed by the Division of Coastal Management to  
12 determine their potential impact to coastal resources and compliance with applicable  
13 standards of this Rule. Such review shall also consider the cumulative impacts of marina  
14 development in accordance with G.S. 113A-120(a)(10); and
- 15 (Q) Replacement of existing marinas to maintain previous service levels shall be allowed  
16 provided that the development complies with the standards for marina development within  
17 this Section.
- 18 (6) Piers and Docking Facilities.
- 19 (A) Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted  
20 only if the greater width is necessary for safe use, to improve public access, or to support  
21 a water dependent use that cannot otherwise occur;
- 22 (B) The total square footage of shaded impact for docks and mooring facilities (excluding the  
23 pier) allowed shall be eight square feet per linear foot of shoreline with a maximum of  
24 2,000 square feet. In calculating the shaded impact, uncovered open water slips shall not  
25 be counted in the total. Projects requiring dimensions greater than those stated in this Rule  
26 shall be permitted only if the greater dimensions are necessary for safe use, to improve  
27 public access, or to support a water dependent use that cannot otherwise occur. Size  
28 restrictions shall not apply to marinas;
- 29 (C) Piers and docking facilities over coastal wetlands shall be no wider than six feet and shall  
30 be elevated at least three feet above any coastal wetland substrate as measured from the  
31 bottom of the decking;
- 32 (D) A boathouse shall not exceed 400 square feet except to accommodate a documented need  
33 for a larger boathouse and shall have sides extending no farther than one-half the height of  
34 the walls as measured from the Normal Water Level or Normal High Water and covering  
35 only the top half of the walls. Measurements of square footage shall be taken of the greatest  
36 exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet  
37 of ~~shoreline~~ shoreline, except that structural boat covers utilizing a frame-supported fabric

1 covering can be permitted on properties with less than 75 linear feet of shoreline when  
2 using screened fabric for side walls. Size restrictions do not apply to marinas;

- 3 (E) The total area enclosed by an individual boat lift shall not exceed 400 square feet except to  
4 accommodate a documented need for a larger boat lift;
- 5 (F) Piers and docking facilities shall be single story. They may be roofed but shall not be  
6 designed to allow second story use;
- 7 (G) Pier and docking facility length shall be limited by:
- 8 (i) not extending beyond the established pier or docking facility length along the  
9 same shoreline for similar use. This restriction does not apply to piers 100 feet or  
10 less in length unless necessary to avoid unreasonable interference with navigation  
11 or other uses of the waters by the public;
- 12 (ii) not extending into the channel portion of the water body; and
- 13 (iii) not extending more than one-fourth the width of a natural water body, or human-  
14 made canal or basin. Measurements to determine widths of the water body, canals  
15 or basins shall be made from the waterward edge of any coastal wetland  
16 vegetation that borders the water body. The one-fourth length limitation does not  
17 apply in areas where the U.S. Army Corps of Engineers, or a local government in  
18 consultation with the Corps of Engineers, has established an official pier-head  
19 line. The one-fourth length limitation shall not apply when the proposed pier is  
20 located between longer piers or docking facilities within 200 feet of the applicant's  
21 property. However, the proposed pier or docking facility shall not be longer than  
22 the pier head line established by the adjacent piers or docking facilities, nor longer  
23 than one-third the width of the water body.
- 24 (H) Piers or docking facilities longer than 400 feet shall be permitted only if the proposed  
25 length gives access to deeper water at a rate of at least 1 foot each 100 foot increment of  
26 length longer than 400 feet, or, if the additional length is necessary to span some  
27 obstruction to navigation. Measurements to determine lengths shall be made from the  
28 waterward edge of any coastal wetland vegetation that borders the water body;
- 29 (I) Piers and docking facilities shall not interfere with the access to any riparian property and  
30 shall have a minimum setback of 15 feet between any part of the pier or docking facility  
31 and the adjacent property owner's areas of riparian access. The line of division of areas of  
32 riparian access shall be established by drawing a line along the channel or deep water in  
33 front of the properties, then drawing a line perpendicular to the line of the channel so that  
34 it intersects with the shore at the point the upland property line meets the water's edge. The  
35 minimum setback provided in the rule may be waived by the written agreement of the  
36 adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. If the  
37 adjacent property is sold before construction of the pier or docking facility commences, the

1 applicant shall obtain a written agreement with the new owner waiving the minimum  
2 setback and submit it to the permitting agency prior to initiating any development of the  
3 pier. Application of this Rule may be aided by reference to the approved diagram in 15A  
4 NCAC 07H .1205(t) illustrating the rule as applied to various shoreline configurations.  
5 Copies of the diagram may be obtained from the Division of Coastal Management. When  
6 shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier  
7 shall be aligned to meet the intent of this Rule to the maximum extent practicable as  
8 determined by the Director of the Division of Coastal Management; and

9 (J) Applicants for authorization to construct a pier or docking facility shall provide notice of  
10 the permit application to the owner of any part of a shellfish franchise or lease over which  
11 the proposed dock or pier would extend. The applicant shall allow the lease holder the  
12 opportunity to mark a navigation route from the pier to the edge of the lease.

13 (7) Bulkheads

14 (A) Bulkhead alignment, for the purpose of shoreline stabilization, shall approximate the  
15 location of normal high water or normal water level;

16 (B) Bulkheads shall be constructed landward of coastal wetlands in order to avoid significant  
17 adverse impacts to the resources;

18 (C) Bulkhead backfill material shall be obtained from an upland source approved by the  
19 Division of Coastal Management pursuant to this Section, or if the bulkhead is a part of a  
20 permitted project involving excavation from a non-upland source, the material so obtained  
21 may be contained behind the bulkhead;

22 (D) Bulkheads shall be permitted below normal high water or normal water level only when  
23 the following standards are met:

24 (i) the property to be bulkheaded has an identifiable erosion problem, whether it  
25 results from natural causes or adjacent bulkheads, or it has unusual geographic or  
26 geologic features, e.g. steep grade bank, which will cause the applicant  
27 unreasonable hardship under the other provisions of this Rule;

28 (ii) the bulkhead alignment extends no further below normal high water or normal  
29 water level than necessary to allow recovery of the area eroded in the year prior  
30 to the date of application, to align with adjacent bulkheads, or to mitigate the  
31 unreasonable hardship resulting from the unusual geographic or geologic features;

32 (iii) the bulkhead alignment will not adversely impact public trust rights or the  
33 property of adjacent riparian owners;

34 (iv) the need for a bulkhead below normal high water or normal water level is do-  
35 cumented by the Division of Coastal Management; and

36 (v) the property to be bulkheaded is in a non-oceanfront area.

37 (E) Where possible, sloping rip-rap, gabions, or vegetation shall be used rather than bulkheads.

1 (8) Beach Nourishment

2 (A) Beach creation or maintenance may be allowed to enhance water related recreational  
3 facilities for public, commercial, and private use consistent with the following:

4 (i) Beaches may be created or maintained in areas where they have historically been  
5 found due to natural processes;

6 (ii) Material placed in the water and along the shoreline shall be clean sand and free  
7 from pollutants. Grain size shall be equal to that found naturally at the site;

8 (iii) Beach creation shall not be allowed in primary nursery areas, nor in any areas  
9 where siltation from the site would pose a threat to shellfish beds;

10 (iv) Material shall not be placed on any coastal wetlands or submerged aquatic  
11 vegetation as defined by MFC;

12 (v) Material shall not be placed on any submerged bottom with significant shellfish  
13 resources as identified by the Division of Marine Fisheries during the permit  
14 review; and

15 (vi) Beach construction shall not create the potential for filling adjacent navigation  
16 channels, canals or boat basins.

17 (B) Placing unconfined sand material in the water and along the shoreline shall not be allowed  
18 as a method of shoreline erosion control;

19 (C) Material from dredging projects may be used for beach nourishment if:

20 (i) it is first handled in a manner consistent with dredged material disposal as set forth  
21 in this Rule;

22 (ii) it is allowed to dry prior to being placed on the beach; and

23 (iii) only that material of acceptable grain size as set forth in Subpart (b)(8)(A)(ii) of  
24 this Rule is removed from the disposal site for placement on the beach. Material  
25 shall not be placed directly on the beach by dredge or dragline during maintenance  
26 excavation.

27 (D) Beach construction shall comply with State and federal water quality standards;

28 (E) The renewal of permits for beach nourishment projects shall require an evaluation by the  
29 Division of Coastal Management of any adverse impacts of the original work; and

30 (F) Permits issued for beach nourishment shall be limited to authorizing beach nourishment  
31 only one time.

32 (9) Groins

33 (A) Groins shall not extend more than 25 feet waterward of the normal high water or normal  
34 water level unless a longer structure is justified by site specific conditions and by an  
35 individual who meets any North Carolina occupational licensing requirements for the type  
36 of structure being proposed and approved during the application process;

- 1 (B) Groins shall be set back a minimum of 15 feet from the adjoining riparian lines. The setback  
2 for rock groins shall be measured from the toe of the structure. This setback may be waived  
3 by written agreement of the adjacent riparian owner(s) or when two adjoining riparian  
4 owners are co-applicants. Should the adjacent property be sold before construction of the  
5 groin commences, the applicant shall obtain a written agreement with the new owner  
6 waiving the minimum setback and submit it to the permitting agency prior to initiating any  
7 development of the groin;
- 8 (C) Groins shall pose no threat to navigation;
- 9 (D) The height of groins shall not exceed one foot above normal high water or normal water  
10 level;
- 11 (E) No more than two structures shall be allowed per 100 feet of shoreline unless the applicant  
12 provides evidence that more structures are needed for shoreline stabilization.
- 13 (F) "L" and "T" sections shall not be allowed at the end of groins; and
- 14 (G) Riprap material used for groin construction shall be free from loose dirt or any other  
15 pollutant and of a size sufficient to prevent its movement from the site by wave and current  
16 action.
- 17 (10) "Freestanding Moorings".
- 18 (A) A "freestanding mooring" is any means to attach a ship, boat, vessel, floating structure or  
19 other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling  
20 as long as the piling is not associated with an existing or proposed pier, dock, or boathouse;
- 21 (B) Freestanding moorings shall be permitted only:
- 22 (i) to riparian property owners within their riparian corridors; or
- 23 (ii) to any applicant proposing to locate a mooring buoy consistent with a water use  
24 plan that is included in either the local zoning or land use plan.
- 25 (C) All mooring fields shall provide an area for access to any mooring(s) and other land based  
26 operations that shall include wastewater pumpout, trash disposal and vehicle parking;
- 27 (D) To protect water quality of shellfishing areas, mooring fields shall not be located within  
28 areas where shellfish harvesting for human consumption is a significant existing use or  
29 adjacent to such areas if shellfish harvest closure is anticipated to result from the location  
30 of the mooring field. In compliance with Section 101(a)(2) of the Federal Water Pollution  
31 Control Act, 33 U.S.C. 1251 (a)(2), and North Carolina Water Quality Standards adopted  
32 pursuant to that section, shellfish harvesting is a significant existing use if it can be  
33 established that shellfish have been regularly harvested for human consumption since  
34 November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable  
35 habitat and are available and suitable for harvesting for the purpose of human consumption.  
36 The Division of Marine Fisheries shall be consulted regarding the significance of shellfish  
37 harvest as an existing use and the magnitude of the quantities of shellfish that have been

1 harvested or are available for harvest in the area where harvest will be affected by the  
2 development;

3 (E) Moorings shall not be located without written consent from the leaseholders or owners of  
4 submerged lands that have been leased from the state or deeded by the State;

5 (F) Moorings shall be located and constructed so as to avoid adverse impacts on navigation  
6 throughout all federally maintained channels. This includes mooring sites (permanent or  
7 temporary), speed or traffic reductions, or any other device, either physical or regulatory,  
8 which may cause a federally maintained channel to be restricted;

9 (G) Open water moorings shall not be enclosed within breakwaters that preclude circulation  
10 and degrade water quality in violation of EMC standards;

11 (H) Moorings and the associated land based operation design shall comply with all applicable  
12 EMC requirements for management of stormwater runoff;

13 (I) Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of  
14 any waste from boat toilets or any other discharge and listing the availability of local pump-  
15 out services and waste disposal;

16 (J) Freestanding moorings associated with commercial shipping, public service or temporary  
17 construction or salvage operations may be permitted without a public sponsor;

18 (K) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing  
19 including the length of the vessel to be moored. Moorings and the attached vessel shall not  
20 interfere with the access of any riparian owner nor shall it block riparian access to channels  
21 or deep water, which allows riparian access. Freestanding moorings shall not interfere with  
22 the ability of any riparian owner to place a pier for access;

23 (L) Freestanding moorings shall not be established in submerged cable or pipe crossing areas  
24 or in a manner that interferes with the operations of an access through any bridge;

25 (M) Freestanding moorings shall be marked or colored in compliance with U.S. Coast Guard  
26 and the WRC requirements and the required marking maintained for the life of the  
27 mooring(s); and

28 (N) The type of material used to create a mooring must be free of pollutants and of a design  
29 and type of material so as to not present a hazard to navigation or public safety.

30 (11) Filling of Canals, Basins and Ditches - Notwithstanding the general use standards for estuarine  
31 systems as set out in Paragraph (a) of this Rule, filling canals, basins and ditches shall be allowed if  
32 all of the following conditions are met:

33 (A) the area to be filled was not created by excavating lands which were below the normal high  
34 water or normal water level;

35 (B) if the area was created from wetlands, the elevation of the proposed filling does not exceed  
36 the elevation of said wetlands so that wetland function will be restored;

- 1 (C) the filling will not adversely impact any designated primary nursery area, shellfish bed,  
2 submerged aquatic vegetation as defined by the MFC, coastal wetlands, public trust right  
3 or public trust usage; and  
4 (D) the filling will not adversely affect the value and enjoyment of property of any riparian  
5 owner.

6 (12) "Submerged Lands Mining"

- 7 (A) Development Standards. Mining of submerged lands shall meet all the following standards:  
8 (i) The biological productivity and biological significance of mine sites, or borrow  
9 sites used for sediment extraction, shall be evaluated for significant adverse  
10 impacts and a protection strategy for these natural functions and values provided  
11 with the State approval request or permit application;  
12 (ii) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and  
13 significant benthic communities identified by the Division of Marine Fisheries or  
14 the WRC shall be avoided;  
15 (iii) Mining shall avoid significant archaeological resources as defined in Rule .0509  
16 of this Subchapter; shipwrecks identified by the Department of Cultural  
17 Resources; and unique geological features that require protection from  
18 uncontrolled or incompatible development as identified by the Division of  
19 Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);  
20 (iv) Mining activities shall not be conducted on or within 500 meters of significant  
21 biological communities identified by the Division of Marine Fisheries or the  
22 WRC, such as high relief hard bottom areas. "High relief" is defined for this Part  
23 as relief greater than or equal to one-half meter per five meters of horizontal  
24 distance;  
25 (v) Mining activities shall be timed to minimize impacts on the life cycles of estuarine  
26 or ocean resources; and  
27 (vi) Mining activities shall not affect potable groundwater supplies, wildlife,  
28 freshwater, estuarine, or marine fisheries.  
29 (B) Permit Conditions. Permits for submerged lands mining may be conditioned on the  
30 applicant amending the mining proposal to include measures necessary to ensure  
31 compliance with the provisions of the Mining Act and the rules for development set out in  
32 this Subchapter. Permit conditions shall also include:  
33 (i) Monitoring by the applicant to ensure compliance with all applicable development  
34 standards; and  
35 (ii) A determination of the necessity and feasibility of restoration shall be made by  
36 the Division of Coastal Management as part of the permit or consistency review  
37 process. Restoration shall be necessary where it will facilitate recovery of the pre-

1 development ecosystem. Restoration shall be considered feasible unless, after  
2 consideration of all practicable restoration alternatives, the Division of Coastal  
3 Management determines that the adverse effects of restoration outweigh the  
4 benefits of the restoration on estuarine or ocean resources. If restoration is  
5 determined to be necessary and feasible, then the applicant shall submit a  
6 restoration plan to the Division of Coastal Management prior to the issuance of  
7 the permit.

8 (C) Dredging activities for the purposes of mining natural resources shall be consistent with  
9 the development standards set out in this Rule;

10 (D) Mitigation. Where mining cannot be conducted consistent with the development standards  
11 set out in this Rule, the applicant may request mitigation approval under 15A NCAC 07M  
12 .0700; and

13 (E) Public Benefits Exception. Projects that conflict with the standards in this Subparagraph,  
14 but provide a public benefit, may be approved pursuant to the standards set out in  
15 Subparagraph (a)(3) of this Rule.

16 (13) "Wind Energy Facilities"

17 (A) An applicant for the development and operation of a wind energy facility shall provide:

18 (i) an evaluation of the proposed noise impacts of the turbines to be associated with  
19 the proposed facility;

20 (ii) an evaluation of shadow flicker impacts for the turbines to be associated with the  
21 proposed facility;

22 (iii) an evaluation of avian and bat impacts of the proposed facility;

23 (iv) an evaluation of viewshed impacts of the proposed facility;

24 (v) an evaluation of potential user conflicts associated with development in the  
25 proposed project area; and

26 (vi) a plan regarding the action to be taken upon decommissioning and removal of the  
27 wind energy facility. The plan shall include estimates of monetary costs, time  
28 frame of removal and the proposed site condition after decommissioning.

29 (B) Development Standards. Development of wind energy facilities shall meet the following  
30 standards in addition to adhering to the requirements outlined in Part (a)(13)(A) of this  
31 Rule:

32 (i) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and  
33 significant benthic communities identified by the Division of Marine Fisheries or  
34 the WRC shall be avoided;

35 (ii) Development shall not be sited on or within 500 meters of significant biological  
36 communities identified by the Division of Marine Fisheries or the WRC, such as



1 high relief hard bottom areas. High relief is defined for this standard as relief  
2 greater than or equal to one-half meter per five meters of horizontal distance;

3 (iii) Development shall not cause irreversible damage to documented archeological  
4 resources including shipwrecks identified by the Department of Cultural  
5 Resources and unique geological features that require protection from  
6 uncontrolled or incompatible development as identified by the Division of  
7 Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);

8 (iv) Development activities shall be timed to avoid significant adverse impacts on the  
9 life cycles of estuarine or ocean resources, or wildlife;

10 (v) Development or operation of a wind energy facility shall not jeopardize the use  
11 of the surrounding waters for navigation or for other public trust rights in public  
12 trust areas or estuarine waters; and

13 (vi) Development or operation of a wind energy facility shall not interfere with air  
14 navigation routes, air traffic control areas, military training routes or special use  
15 airspace and shall comply with standards adopted by the Federal Aviation  
16 Administration and codified under 14 CFR Part 77.13.

17 (C) Permit Conditions. Permits for wind energy facilities may be conditioned on the applicant  
18 amending the proposal to include measures necessary to ensure compliance with the  
19 standards for development set out in this Rule. Permit conditions may include monitoring  
20 to ensure compliance with all applicable development standards; and

21 (D) Public Benefits Exception. Projects that conflict with these standards, but provide a public  
22 benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this  
23 Rule.

24  
25 *History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124;*

26 *Eff. September 9, 1977;*

27 *Amended Eff. February 1, 1996; April 1, 1993; February 1, 1993; November 30, 1992;*

28 *RRC Objection due to ambiguity Eff. March 21, 1996;*

29 *Amended Eff. August 1, 2012(see S.L. 2012-143, s.1.(f)); February 1, 2011; August 1, 2010;*

30 *June 1, 2010; August 1, 1998; May 1, 1996;*

31 *Readopted Eff. July 1, 2020;*

32 *Amended Eff. July 1, 2022.*

1 15A NCAC 07H .0304 is amended as published in 36:14 NCR 1219-1221 as follows:

2  
3 **15A NCAC 07H .0304 AECs WITHIN OCEAN HAZARD AREAS**

4 The ocean hazard AECs contain all of the following areas:

- 5 (1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion  
6 and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water  
7 line. The landward extent of this area is the distance landward from the ~~first line of stable and natural~~  
8 vegetation line as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by  
9 multiplying the long-term annual erosion rate times 90; provided that, where there has been no  
10 long-term erosion or the rate is less than two feet per year, this distance shall be set at 180 feet  
11 landward from the ~~first line of stable and natural vegetation.~~ vegetation line. For the purposes of this  
12 Rule, the erosion rates are the long-term average based on available historical data. The current  
13 long-term average erosion rate data for each segment of the North Carolina coast is depicted on  
14 maps entitled "North Carolina 2019 Oceanfront Setback Factors & Long-Term Average Annual  
15 Erosion Rate Update Study" and approved by the Coastal Resources Commission on February 28,  
16 2019 (except as such rates may be varied in individual contested cases or in declaratory or  
17 interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion  
18 per year. The maps are available without cost from any Local Permit Officer or the Division of  
19 Coastal Management on the internet at <http://www.nccoastalmanagement.net>.
- 20 (2) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to  
21 erosion, flooding, and other adverse effects of sand, wind, and water because of their proximity to  
22 dynamic ocean inlets. This area extends landward from the mean low water line a distance  
23 encompassing that area within which the inlet migrates, based on statistical analysis, and shall  
24 consider such factors as previous inlet territory, structurally weak areas near the inlet, and external  
25 influences such as jetties, terminal groins, and channelization. The areas on the maps identified as  
26 Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and  
27 Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J.  
28 Priddy and Rick Carraway are incorporated by reference and are hereby designated as Inlet Hazard  
29 Areas, except for:
- 30 (a) the location of a former inlet which has been closed for at least 15 years;
- 31 (b) inlets that due to shoreline migration, no longer include the current location of the inlet;
- 32 and
- 33 (c) inlets providing access to a State Port via a channel maintained by the United States Army  
34 Corps of Engineers.

35 In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in  
36 no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible  
37 area. This report is available for inspection at the Department of Environmental Quality, Division

1 of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website  
2 referenced in Item (1) of this Rule.

3 (3) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable and natural  
4 vegetation is present may be designated as Unvegetated Beach Areas on either a permanent or  
5 temporary basis as follows:

6 (a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic  
7 area that is subject to rapid unpredictable landform change due to wind and wave action.  
8 The areas in this category shall be designated following studies by the Division of Coastal  
9 Management. These areas shall be designated on maps approved by the Coastal Resources  
10 Commission and available without cost from any Local Permit Officer or the Division of  
11 Coastal Management on the internet at the website referenced in Item (1) of this Rule.

12 (b) An area that is unvegetated as a result of a hurricane or other major storm event may be  
13 designated by the Coastal Resources Commission as an Unvegetated Beach Area for a  
14 specific period of time, or until the vegetation has re-established in accordance with 15A  
15 NCAC 07H .0305(a)(5). At the expiration of the time specified or the re-establishment of  
16 the vegetation, the area shall return to its pre-storm designation.

17 (c) The Commission designates as temporary unvegetated beach areas those oceanfront areas  
18 of:

19 (i) Surf City and North Topsail Beach in which the vegetation line as shown on the  
20 United States National Oceanic and Atmospheric Administration imagery dated  
21 September 17, 2018 was destroyed as a result of Hurricane Florence in September  
22 2018; and

23 (ii) Oak Island in which the vegetation line as shown on the United States National  
24 Oceanic and Atmospheric Administration and Geological Survey imagery dated  
25 August 4, 2020 was destroyed as a result of Hurricane Isaias in August 2020.

26 The designation AEC boundaries can be found on the Division's website at  
27 [https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unvegetated\\_beach\\_aec.pdf](https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unvegetated_beach_aec.pdf) and  
28 [https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unveg\\_beachAEC\\_Oak\\_Island.zi](https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unveg_beachAEC_Oak_Island.zip)  
29 p. This designation shall continue until such time as the stable and natural vegetation has  
30 reestablished, or until the area is permanently designated as an unvegetated beach area  
31 pursuant to Sub-Item (3)(a) of this Rule.

32 (4) State Ports Inlet Management Area. These are areas adjacent to and within Beaufort Inlet and the  
33 mouth of the Cape Fear River, providing access to a State Port via a channel maintained by the  
34 United States Army Corps of Engineers. These areas are unique due to the influence of federally-  
35 maintained channels, and the critical nature of maintaining shipping access to North Carolina's State  
36 Ports. These areas may require specific management strategies not warranted at other inlets to  
37 address erosion and shoreline stabilization. State Ports Inlet Management Areas shall extend from

1 the mean low water line landward as designated on maps approved by the Coastal Resources  
2 Commission and available without cost from the Division of Coastal Management, and on the  
3 internet at the website at  
4 [https://files.nc.gov/ncdeq/Coastal%20Management/GIS/state\\_port\\_aec.pdf](https://files.nc.gov/ncdeq/Coastal%20Management/GIS/state_port_aec.pdf).

5  
6 *History Note: Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124;*  
7 *Eff. September 9, 1977;*  
8 *Amended Eff. December 1, 1993; November 1, 1988; September 1, 1986; December 1, 1985;*  
9 *Temporary Amendment Eff. October 10, 1996;*  
10 *Amended Eff. April 1, 1997;*  
11 *Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;*  
12 *Temporary Amendment Eff. October 22, 1997;*  
13 *Amended Eff. April 1, 2020; July 1, 2016; September 1, 2015; May 1, 2014; February 1, 2013;*  
14 *January 1, 2010; February 1, 2006; October 1, 2004; April 1, 2004; August 1, 1998;*  
15 *Readopted Eff. December 1, 2020;*  
16 *Amended Eff. July 1, 2022; September 1, 2021.*

1 15A NCAC 07H .0305 is amended as published in 36:14 NCR 1221-1226 as follows:

2  
3 **15A NCAC 07H .0305 ~~GENERAL IDENTIFICATION~~ DEFINITION AND DESCRIPTION OF**  
4 **LANDFORMS**

5 ~~(a)~~ This ~~Paragraph~~ Rule describes natural and man-made features that are found within the ocean hazard area of  
6 environmental concern.

7 (1) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend  
8 from the mean low water line landward to a point where either:

9 ~~(A)(a)~~ the growth of vegetation occurs; or

10 ~~(B)(b)~~ a distinct change in slope or elevation alters the configuration of the landform, whichever  
11 is farther landward.

12 (2) Nearshore. The nearshore is the portion of the beach seaward of mean low water that is characterized  
13 by dynamic changes both in space and time as a result of storms.

14 (3) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches  
15 having an elevation equal to the mean flood level (in a storm having a one percent chance of being  
16 equaled or exceeded in any given year) for the area plus six feet. Primary dunes extend landward to  
17 the lowest elevation in the depression behind that same mound of sand commonly referred to as the  
18 "dune trough".

19 (4) Frontal Dunes. The frontal dune is the first mound of sand located landward of ocean beaches that  
20 has stable and natural vegetation present.

21 (5) Vegetation Line. The vegetation line refers to the first line of stable and natural vegetation, which  
22 shall be used as the reference point for measuring oceanfront setbacks. This line represents the  
23 boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides,  
24 storms and wind, and the more stable upland areas. The vegetation line is generally located at or  
25 immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division  
26 of Coastal Management or Local Permit Officer shall determine the location of the stable and natural  
27 vegetation line based on visual observations of plant composition and density. If the vegetation has  
28 been planted, it may be considered stable when the majority of the plant stems are from continuous  
29 rhizomes rather than planted individual rooted sets. Planted vegetation may be considered natural  
30 when the majority of the plants are mature and additional species native to the region have been  
31 recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally  
32 occurring. In areas where there is no stable and natural vegetation present, this line may be  
33 established by interpolation between the nearest adjacent stable natural vegetation by on-ground  
34 observations or by aerial photographic interpretation.

35 (6) ~~Static~~ Pre-project Vegetation Line. In areas within the boundaries of a large-scale beach fill project,  
36 the vegetation line that existed within one year prior to the onset of project construction shall be  
37 defined as the ~~"static"~~ "pre-project" vegetation line". The "onset of project construction" shall be

1 defined as the date sediment placement begins, with the exception of projects completed prior to the  
2 original effective date of this Rule, in which case the award of the contract date will be considered  
3 the onset of construction. A ~~static~~ pre-project vegetation line shall be established in coordination  
4 with the Division of Coastal Management using on-ground observation and survey or aerial imagery  
5 for all areas of oceanfront that undergo a large-scale beach fill project. Once a ~~static~~ pre-project  
6 vegetation line is established, and after the onset of project construction, this line shall be used as  
7 the reference point for measuring oceanfront setbacks in all locations where it is landward of the  
8 vegetation line. In all locations where the vegetation line as defined in this Rule is landward of the  
9 ~~static~~ pre-project vegetation line, the vegetation line shall be used as the reference point for  
10 measuring oceanfront setbacks. A ~~static~~ pre-project vegetation line shall not be established where a  
11 ~~static~~ pre-project vegetation line is already in place, including those established by the Division of  
12 Coastal Management prior to the effective date of this Rule. A record of all ~~static~~ pre-project  
13 vegetation lines, including those established by the Division of Coastal Management prior to the  
14 effective date of this Rule, shall be maintained by the Division of Coastal Management for  
15 determining development standards as set forth in Rule .0306 of this Section. Because the impact of  
16 Hurricane Floyd in September 1999 caused significant portions of the vegetation line in the Town  
17 of Oak Island and the Town of Ocean Isle Beach to be relocated landward of its pre-storm position,  
18 the ~~static~~ pre-project line for areas landward of the beach fill construction in the Town of Oak Island  
19 and the Town of Ocean Isle Beach, the onset of which occurred in 2000, shall be defined by the  
20 general trend of the vegetation line established by the Division of Coastal Management from June  
21 1998 aerial orthophotography.

- 22 (7) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment  
23 used solely to establish or strengthen dunes shall not be considered a beach fill project under this  
24 Rule. A "large-scale beach fill project" shall be defined as any volume of sediment greater than  
25 300,000 cubic yards or any storm protection project constructed by the U.S. Army Corps of  
26 Engineers.
- 27 (8) Erosion Escarpment. The normal vertical drop in the beach profile caused from high tide or storm  
28 tide erosion.
- 29 (9) Measurement Line. The line from which the ocean hazard setback as described in Rule .0306(a) of  
30 this Section is measured in the unvegetated beach area of environmental concern as described in  
31 Rule .0304(3) of this Section. In areas designated pursuant to Rule .0304(3)(b) of this Section, the  
32 Division of Coastal Management shall establish a measurement line by:
  - 33 ~~(A)~~(a) determining the average distance the pre-storm vegetation line receded at the closest  
34 vegetated site adjacent to the area designated by the Commission as the unvegetated beach  
35 AEC; and
  - 36 ~~(B)~~(b) mapping a line equal to the average recession determination in Part ~~(A)~~(a) of this  
37 Subparagraph, measured in a landward direction from the first line of stable and natural

1                                   vegetation line on the most recent pre-storm aerial photography in the area designated as  
2                                   an unvegetated beach AEC.

3                   ~~(10) — Development Line. The line established in accordance with 15A NCAC 07J .1300 by local~~  
4                   ~~governments representing the seaward most allowable location of oceanfront development. In areas~~  
5                   ~~that have development lines approved by the CRC, the vegetation line or measurement line shall be~~  
6                   ~~used as the reference point for measuring oceanfront setbacks instead of the static vegetation line,~~  
7                   ~~subject to the provisions of Rule .0306(a)(2) of this Section.~~

8                   ~~(b) For the purpose of public and administrative notice and convenience, each designated minor development permit~~  
9                   ~~letting agency with ocean hazard areas may designate, subject to CRC approval in accordance with the local~~  
10                   ~~implementation and enforcement plan as defined in 15A NCAC 07I .0500, an identifiable land area within which the~~  
11                   ~~ocean hazard areas occur. This designated notice area shall include all of the land areas defined in Rule .0304 of this~~  
12                   ~~Section. Natural or man made landmarks may be considered in delineating this area.~~

13  
14                   *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*  
15                   *Eff. September 9, 1977;*  
16                   *Amended Eff. December 1, 1992; September 1, 1986; December 1, 1985; February 2, 1981;*  
17                   *Temporary Amendment Eff. October 10, 1996;*  
18                   *Amended Eff. January 1, 1997;*  
19                   *Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;*  
20                   *Temporary Amendment Eff. October 22, 1997;*  
21                   *Amended Eff. April 1, 2020; April 1, 2016; April 1, 2008; August 1, 2002; August 1, 1998;*  
22                   *Readopted Eff. December 1, 2020;*  
23                   *Amended Eff. July 1, 2022.*

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0306

**DEADLINE FOR RECEIPT: Friday, June 10, 2022**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Part (a)(9)(C), the added text, particularly the last phrase, "but will not be held to the landward-most adjacent structure or an average line of structures." is unclear.*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: June 6, 2022



1 15A NCAC 07H .0306 is amended **with changes** as published in 36:14 NCR 1222-1226 as follows:

2  
3 **15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS**

4 (a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or  
5 elsewhere in the Coastal Resources Commission's rules shall be located according to whichever of the following is  
6 applicable:

7 (1) The ocean hazard setback for development shall be measured in a landward direction from the  
8 vegetation line, the ~~static~~ pre-project vegetation line, or the measurement line, whichever is  
9 applicable.

10 ~~(2) In areas with a development line, the ocean hazard setback shall be set in accordance with~~  
11 ~~Subparagraphs (a)(3) through (9) of this Rule. With the exception of those types of development~~  
12 ~~defined in 15A NCAC 07J .1301(d), in no case shall new development be sited seaward of the~~  
13 ~~development line. In areas with a Static Line Exception approved in accordance with 15A NCAC~~  
14 ~~07J .1200 and a Development Line approved in accordance with 15A NCAC 07J .1300, the~~  
15 ~~petitioner shall notify the Division of Coastal Management which one of the two approaches will~~  
16 ~~be utilized and applied to the entire large scale project area as defined in 15A NCAC 07H~~  
17 ~~.0305(a)(7).~~

18 ~~(3) In no case shall a development line be created or established on State owned lands or oceanward of~~  
19 ~~the mean high water line or perpetual property easement line, whichever is more restrictive.~~

20 ~~(4)~~(2) The ocean hazard setback shall be determined by both the size of development and the shoreline  
21 long term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by  
22 total floor area for structures and buildings or total area of footprint for development other than  
23 structures and buildings. Total floor area includes the following:

- 24 (A) The total square footage of heated or air-conditioned living space;  
25 (B) The total square footage of parking elevated above ground level; and  
26 (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground  
27 level, excluding attic space that is not designed to be load-bearing.

28 Decks, roof-covered porches, and walkways shall not be included in the total floor area unless they  
29 are enclosed with material other than screen mesh or are being converted into an enclosed space  
30 with material other than screen mesh.

31 ~~(5)~~(3) With the exception of those types of development defined in ~~15A NCAC 07H .0309~~, 15A NCAC  
32 07H .0309(a), no development, including any portion of a building or structure, shall extend  
33 oceanward of the ocean hazard setback. This includes roof overhangs and elevated structural  
34 components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings  
35 or footings. The ocean hazard setback shall be established based on the following criteria:

- 36 (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60  
37 feet or 30 times the shoreline erosion rate, whichever is greater;

- 1 (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000  
2 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate,  
3 whichever is greater;
- 4 (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000  
5 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate,  
6 whichever is greater;
- 7 (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000  
8 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate,  
9 whichever is greater;
- 10 (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000  
11 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate,  
12 whichever is greater;
- 13 (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000  
14 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate,  
15 whichever is greater;
- 16 (G) A building or other structure greater than or equal to 80,000 square feet but less than  
17 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline  
18 erosion rate, whichever is greater;
- 19 (H) A building or other structure greater than or equal to 100,000 square feet requires a  
20 minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
- 21 (I) Infrastructure that is linear in nature, such as roads, bridges, pedestrian access such as  
22 boardwalks and sidewalks, and utilities providing for the transmission of electricity, water,  
23 telephone, cable television, data, storm water, and sewer requires a minimum setback of  
24 60 feet or 30 times the shoreline erosion rate, whichever is greater;
- 25 (J) Parking lots greater than or equal to 5,000 square feet require a setback of 120 feet or 60  
26 times the shoreline erosion rate, whichever is greater;
- 27 (K) Notwithstanding any other setback requirement of this Subparagraph, construction of a  
28 new building or other structure greater than or equal to 5,000 square feet in a community  
29 with ~~a~~ an unexpired static line exception or Beach Management Plan approved by the  
30 Commission in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120  
31 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever  
32 is greater. The setback shall be measured landward from either ~~the static vegetation line,~~  
33 ~~the vegetation line,~~ line or measurement line, whichever is farthest landward; and
- 34 (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of  
35 ~~single family or duplex residential structures with a total floor area greater than 5,000~~  
36 ~~square feet, and commercial and multi family residential structures~~ a structure with a total

1 floor area no greater than 10,000 square ~~feet~~, feet shall be allowed provided that the  
2 structure meets the following criteria:

- 3 (i) the structure ~~is in a community with an unexpired static line exception, Beach~~  
4 Management Plan approved by the Commission, or was originally constructed  
5 prior to August 11, 2009;
- 6 (ii) the structure as replaced does not exceed the original footprint or square footage;
- 7 (iii) it is not possible for the structure to be rebuilt in a location that meets the ocean  
8 hazard setback criteria required under Subparagraph (a)(5) of this Rule;
- 9 (iv) the structure as replaced meets the minimum setback required under Part (a)(5)(A)  
10 of this Rule; a minimum setback of 60 feet or 30 times the shoreline erosion rate,  
11 whichever is greater; and
- 12 (v) the structure is rebuilt as far landward on the lot as feasible.

13 ~~(6)~~(4) If a primary dune exists in the ~~AEC~~ AEC, on or landward of the lot where the development is  
14 proposed, the development shall be landward of the applicable ocean hazard setback and the crest  
15 of the primary dune, the ocean hazard setback, or development line, whichever is farthest from  
16 vegetation line, static vegetation line, or measurement line, whichever is applicable. dune. For  
17 existing ~~lots, however,~~ lots where setting the development landward of the crest of the primary dune  
18 would preclude any practical use of the lot, development may be located oceanward of the primary  
19 dune. In such cases, the development may be located landward of the ocean hazard setback, ~~but~~ and  
20 and shall not be located on or oceanward of a frontal ~~dune or the development line. The words~~ dune.  
21 For the purposes of this Rule, "existing lots" in this Rule shall mean a lot or tract of land that, as of  
22 June 1, 1979, is specifically described in a recorded plat and cannot be enlarged by combining the  
23 lot or tract of land with a contiguous lot or tract of land under the same ownership.

24 ~~(7)~~(5) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot where  
25 the development is proposed, the development shall be set landward of the frontal ~~dune, dune or~~  
26 ocean hazard setback, ~~or development line,~~ whichever is farthest from the vegetation line, ~~static pre-~~  
27 project vegetation line, or measurement line, whichever is applicable.

28 ~~(8)~~ ~~If neither a primary nor frontal dune exists in the AEC on or landward of the lot where development~~  
29 ~~is proposed, the structure shall be landward of the ocean hazard setback or development line,~~  
30 ~~whichever is more restrictive.~~

31 ~~(9)~~(6) Structural additions or increases in the footprint or total floor area of a building or structure represent  
32 expansions to the total floor area and shall meet the setback requirements established in this Rule  
33 and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be  
34 ~~cosmetically, but shall not be structurally,~~ cosmetically but not be structurally attached to an existing  
35 structure that does not conform with current setback requirements.

36 ~~(10)~~(7) Established common law and statutory public rights of access to and use of public trust lands and  
37 waters in ocean hazard areas shall not be eliminated or ~~restricted.~~ restricted, nor shall such

1 development increase the risk of damage to public trust areas. Development shall not encroach upon  
2 public accessways, nor shall it limit the intended use of the accessways.

3 ~~(11)~~(8) Development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC  
4 07H .0305 shall be measured landward from the ~~static pre-project~~ vegetation line as defined in this  
5 Section, unless ~~a development line~~ an unexpired static line exception or Beach Management Plan  
6 approved by the Commission has been approved for the local jurisdiction by the Coastal Resources  
7 Commission in accordance with ~~15A NCAC 07J .1300.~~ 15A NCAC 07J .1200.

8 ~~(12)~~(9) ~~In order to allow for development landward of the large scale beach fill project that cannot meet the~~  
9 ~~setback requirements from the static vegetation line, but can or has the potential to meet the setback~~  
10 ~~requirements from the vegetation line set forth in Subparagraphs (a)(1) and (a)(5) of this Rule, a~~ Δ  
11 local government, group of local governments involved in a regional beach fill project, or qualified  
12 "owners' association" as defined in G.S. 47F-1-103(3) that has the authority to approve the locations  
13 of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at  
14 least one mile of ocean shoreline, may petition the Coastal Resources Commission for a "static line  
15 exception" in accordance with 15A NCAC 07J .1200. The static line exception shall apply to  
16 development of property that lies both within the jurisdictional boundary of the petitioner and the  
17 boundaries of the large scale beach fill project. This static line exception shall also allow  
18 development greater than 5,000 square feet to use the setback provisions defined in Part (a)(5)(K)  
19 of this Rule in areas that lie within the jurisdictional boundary of the petitioner, and the boundaries  
20 of the large scale beach fill project. approval of a "Beach Management Plan" in accordance with  
21 15A NCAC 07J .1200. If the request for a Beach Management Plan is approved, the Coastal  
22 Resources Commission shall allow development setbacks to be measured from a vegetation line that  
23 is oceanward of the static pre-project vegetation line under the following conditions:

- 24 (A) Development meets all setback requirements from the vegetation line defined in  
25 Subparagraphs (a)(1) and ~~(a)(5)~~ (a)(3) of this Rule;
- 26 (B) Development setbacks shall be calculated from the shoreline erosion rate in place at the  
27 time of permit issuance;
- 28 (C) No portion of a building or structure, including roof overhangs and elevated portions that  
29 are cantilevered, knee braced, or otherwise extended beyond the support of pilings or  
30 footings, extends oceanward of the landward-most adjacent habitable building or structure.  
31 The alignment shall be measured from the most oceanward point of the adjacent building  
32 or structure's roof line, including roofed decks, if applicable. An "adjacent" property is one  
33 that shares a boundary line with the site of the proposed development. When no adjacent  
34 buildings or structures exist, or the configuration of a lot, street, or shoreline precludes  
35 the placement of a building or structure in line with the landward-most adjacent building  
36 or structure, an average line of construction shall be determined by the Division of Coastal  
37 Management on a case by case basis in order to determine an ocean hazard setback that is

1 ~~landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate~~  
2 ~~or 60 feet, whichever is greater; Director of the Division of Coastal Management based on~~  
3 ~~an approximation of the average seaward-most positions of the rooflines of adjacent~~  
4 ~~structures along the same shoreline, extending 500 feet in either direction. If no structures~~  
5 ~~exist within this distance, the proposed structure must meet the applicable setback from the~~  
6 ~~Vegetation Line but will not [he] be held to the landward-most adjacent structure or an~~  
7 ~~average line of structures.~~

8 (D) With the exception of swimming pools, the ~~development exceptions~~ defined in Rule  
9 .0309(a) of this Section shall be allowed oceanward of the ~~static vegetation line; and pre-~~  
10 ~~project vegetation line.~~

11 (E) ~~Development shall not be eligible for the exception defined in Rule .0309(b) of this~~  
12 ~~Section.~~

13 ~~(b) No development shall be permitted that involves the removal or relocation of primary or frontal dune sand or~~  
14 ~~vegetation thereon that would adversely affect the integrity of the dune. Other dunes within the ocean hazard area~~  
15 ~~shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these~~  
16 ~~other dunes shall be allowed only to the extent permitted by 15A NCAC 07H .0308(b).~~

17 ~~(e)(b)~~ Development shall not cause irreversible damage to historic architectural or archaeological resources as  
18 documented by the local historic commission, the North Carolina Department of Natural and Cultural Resources, or  
19 the National Historical Registry.

20 ~~(d) Development shall comply with minimum lot size and set back requirements established by local regulations.~~

21 ~~(e)(c)~~ Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks  
22 existing as of June 1, 1979.

23 ~~(f) Development shall comply with the general management objective for ocean hazard areas set forth in 15A NCAC~~  
24 ~~07H .0303.~~

25 ~~(g) Development shall not interfere with legal access to, or use of, public resources, nor shall such development~~  
26 ~~increase the risk of damage to public trust areas.~~

27 ~~(h)(d)~~ Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These  
28 measures shall be implemented at the applicant's expense and may include actions that:

- 29 (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
- 30 (2) restore the affected environment; or
- 31 (3) compensate for the adverse impacts by replacing or providing substitute resources.

32 ~~(i)(c)~~ Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written  
33 acknowledgment from the applicant to the Division of Coastal Management that the applicant is aware of the risks  
34 associated with development in this hazardous area and the limited suitability of this area for permanent structures.  
35 The acknowledgment shall state that the Coastal Resources Commission does not guarantee the safety of the  
36 development and assumes no liability for future damage to the development.

1 ~~(f)~~ All The relocation or elevation of structures shall require permit approval. ~~Structures relocated with public funds~~  
2 ~~shall comply with the applicable setback line and other applicable AEC rules. Structures, including septic tanks and~~  
3 ~~other essential accessories, relocated entirely with non-public funds shall be relocated the maximum feasible distance~~  
4 ~~landward of the present location. Septic tanks shall not be located oceanward of the primary structure. All relocation~~  
5 ~~of structures shall meet all other applicable local and state rules.~~

6 (1) Structures relocated landward with public funds shall comply with the applicable ocean hazard  
7 setbacks and other applicable AEC rules.

8 (2) Structures relocated landward entirely with non-public funds that do not meet current applicable  
9 ocean hazard setbacks may be relocated the maximum feasible distance landward of its present  
10 location. Septic tanks shall not be relocated oceanward of the primary structure.

11 (3) Existing structures shall not be elevated if any portion of the structure is located seaward of the  
12 vegetation line.

13 ~~(g)~~ Permits shall include the condition that any structure shall be relocated or dismantled when it becomes  
14 imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any such  
15 structure shall be relocated or dismantled within ~~two~~ eight years of the time when it becomes imminently threatened,  
16 and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach fill takes place within  
17 ~~two~~ eight years of the time the structure becomes imminently threatened, so that the structure is no longer imminently  
18 threatened, then it need not be relocated or ~~dismantled at that time.~~ dismantled. This permit condition shall not affect  
19 the permit holder's right to seek authorization of temporary protective measures allowed pursuant to 15A NCAC 07H  
20 .0308(a)(2).

21  
22 *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*  
23 *Eff. September 9, 1977;*  
24 *Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;*  
25 *RRC Objection due to ambiguity Eff. January 24, 1992;*  
26 *Amended Eff. March 1, 1992;*  
27 *RRC Objection due to ambiguity Eff. May 21, 1992;*  
28 *Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992;*  
29 *RRC Objection due to ambiguity Eff. May 18, 1995;*  
30 *Amended Eff. August 11, 2009; April 1, 2007; November 1, 2004; June 27, 1995;*  
31 *Temporary Amendment Eff. January 3, 2013;*  
32 *Amended Eff. September 1, 2017; February 1, 2017; April 1, 2016; September 1, 2013;*  
33 *Readopted Eff. December 1, 2020;*  
34 *Amended Eff. July 1, 2022; December 1, 2021.*

## REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0308

**DEADLINE FOR RECEIPT: Friday, June 10, 2022**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Part (a)(1)(D), is "shoreline erosion response project" defined anywhere? Also, "as identified by natural resource agencies" is vague. To which agencies does this refer?*

*Subpart (a)(1)(H)(ii), by what criteria or factors is inadequacy or impracticability determined?*

*Subpart (a)(1)(I)(i), how is necessity determined? Should "commercial navigation channel of regional significance" be defined? Where are the "federally authorized limits" found?*

*Part (a)(2)(B), the commas after "associated right of ways" and "right-of-way in the case of roads" are unnecessary.*

*Part (a)(2)(E), the comma after "waterward of the structure to be protected" on line 24 is unnecessary.*

*Part (a)(2)(G), the comma after "beach nourishment project" on line 1 is unnecessary. Also, line 7 through 9, could the temporary erosion control structure be extended, or new segments constructed, under an existing permit? Under an expired permit? How?*

*Subparts (a)(2)(H)(i) and (ii), delete the "or" at the end of (i) and (ii). In (ii), should it be "and has a commitment"? On line 34, an oxford comma after "inlet relocation" is needed.*

*Subparagraph (b)(1), delete "thereon". In (b)(6), line 25, should it be "may be permitted" instead of "is permissible"?*

*Subparagraph (c)(4), line 18, add a comma after "frontal dunes" for clarity. Subparagraph (c)(5), line 28, spell out "FLSNV".*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: June 6, 2022

1 15A NCAC 07H .0308 is amended **with changes** as published in 36:14 NCR 1226-1231 as follows:

2  
3 **15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS**

4 (a) Ocean Shoreline Erosion Control Activities:

5 (1) Use Standards Applicable to all Erosion Control Activities:

- 6 (A) All oceanfront erosion response activities shall be consistent with the general policy  
7 statements in 15A NCAC 07M .0200.
- 8 (B) Permanent erosion control structures may cause significant adverse impacts on the value  
9 and enjoyment of adjacent properties or public access to and use of the ocean beach, and,  
10 therefore, unless specifically authorized under the Coastal Area Management Act, are  
11 prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and  
12 breakwaters.
- 13 (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront  
14 properties without regard to the size of the structure on the property or the date of its  
15 construction.
- 16 (D) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that  
17 sustain substantial habitat for fish and wildlife species, as identified by natural resource  
18 agencies during project review, unless mitigation measures are incorporated into project  
19 design, as set forth in Rule .0306(h) of this Section.
- 20 (E) Project construction shall be timed to minimize adverse effects on biological activity.
- 21 (F) Prior to completing any erosion response project, all exposed remnants of or debris from  
22 failed erosion control structures must be removed by the permittee.
- 23 (G) Permanent erosion control structures that would otherwise be prohibited by these standards  
24 may be permitted on finding by the Division that:
- 25 (i) the erosion control structure is necessary to protect a bridge that provides the only  
26 existing road access on a barrier island, that is vital to public safety, and is  
27 imminently threatened by erosion as defined in Part (a)(2)(B) of this Rule;
- 28 (ii) the erosion response measures of relocation, beach nourishment or temporary  
29 stabilization are not adequate to protect public health and safety; and
- 30 (iii) the proposed erosion control structure will have no adverse impacts on adjacent  
31 properties in private ownership or on public use of the beach.
- 32 (H) Structures that would otherwise be prohibited by these standards may also be permitted on  
33 finding by the Division that:
- 34 (i) the structure is necessary to protect a state or federally registered historic site that  
35 is imminently threatened by shoreline erosion as defined in Part (a)(2)(B) of this  
36 Rule;



- 1 (ii) the erosion response measures of relocation, beach nourishment or temporary  
2 stabilization are not adequate and practicable to protect the site;
- 3 (iii) the structure is limited in extent and scope to that necessary to protect the site; and
- 4 (iv) a permit for a structure under this Part may be issued only to a sponsoring public  
5 agency for projects where the public benefits outweigh the significant adverse  
6 impacts. Additionally, the permit shall include conditions providing for mitigation  
7 or minimization by that agency of significant adverse impacts on adjoining  
8 properties and on public access to and use of the beach.
- 9 (I) Structures that would otherwise be prohibited by these standards may also be permitted on  
10 finding by the Division that:
- 11 (i) the structure is necessary to maintain an existing commercial navigation channel  
12 of regional significance within federally authorized limits;
- 13 (ii) dredging alone is not practicable to maintain safe access to the affected channel;
- 14 (iii) the structure is limited in extent and scope to that necessary to maintain the  
15 channel;
- 16 (iv) the structure shall not have significant adverse impacts on fisheries or other public  
17 trust resources; and
- 18 (v) a permit for a structure under this Part may be issued only to a sponsoring public  
19 agency for projects where the public benefits outweigh the significant adverse  
20 impacts. Additionally, the permit shall include conditions providing for mitigation  
21 or minimization by that agency of any significant adverse impacts on adjoining  
22 properties and on public access to and use of the beach.
- 23 (J) The Commission may renew a permit for an erosion control structure issued pursuant to a  
24 variance granted by the Commission prior to 1 July 1995. The Commission may authorize  
25 the replacement of a permanent erosion control structure that was permitted by the  
26 Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the  
27 Commission finds that:
- 28 (i) the structure will not be enlarged beyond the dimensions set out in the permit;
- 29 (ii) there is no practical alternative to replacing the structure that will provide the same  
30 or similar benefits; and
- 31 (iii) the replacement structure will comply with all applicable laws and with all rules,  
32 other than the rule or rules with respect to which the Commission granted the  
33 variance, that are in effect at the time the structure is replaced.
- 34 (K) Proposed erosion response measures using innovative technology or design shall be  
35 considered as experimental and shall be evaluated on a case-by-case basis to determine  
36 consistency with 15A NCAC 07M .0200 and general and specific use standards within this  
37 Section.

1 (2) Temporary Erosion Control Structures:

2 (A) Permittable temporary erosion control structures shall be limited to sandbags placed  
3 landward of mean high water and parallel to the shore.

4 (B) Temporary erosion control structures as defined in Part (A) of this Subparagraph may be  
5 used to protect only imminently threatened roads and associated right of ways, and  
6 buildings and their associated septic systems. A structure is considered imminently  
7 threatened if its foundation, septic system, or right-of-way in the case of roads, is less than  
8 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from  
9 the erosion scarp or in areas where there is no obvious erosion scarp may also be found to  
10 be imminently threatened when site conditions, such as a flat beach profile or accelerated  
11 erosion, increase the risk of imminent damage to the structure.

12 (C) Temporary erosion control structures shall be used to protect only the principal structure  
13 and its associated septic system, but not appurtenances such as pools, gazebos, decks or  
14 any amenity that is allowed under Rule .0309 of this Section as an exception to the erosion  
15 setback requirement.

16 (D) Temporary erosion control structures may be placed waterward of a septic system when  
17 there is no alternative to relocate it on the same or adjoining lot so that it is landward of or  
18 in line with the structure being protected.

19 (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of  
20 the structure to be protected except to align with temporary erosion control structures on  
21 adjacent properties, where the Division has determined that gaps between adjacent erosion  
22 control structures may result in an increased risk of damage to the structure to be protected.  
23 The landward side of such temporary erosion control structures shall not be located more  
24 than 20 feet waterward of the structure to be protected, or the right-of-way in the case of  
25 roads. If a building or road is found to be imminently threatened and at an increased risk  
26 of imminent damage due to site conditions such as a flat beach profile or accelerated  
27 erosion, temporary erosion control structures may be located more than 20 feet waterward  
28 of the structure being protected. In cases of increased risk of imminent damage, the location  
29 of the temporary erosion control structures shall be determined by the Director of the  
30 Division of Coastal Management or the Director's designee in accordance with Part (A) of  
31 this Subparagraph.

32 (F) Temporary erosion control structures may remain in place for up to eight years for a  
33 building and its associated septic system, a bridge or a road. The property owner shall be  
34 responsible for removal of any portion of the temporary erosion control structure exposed  
35 above grade within 30 days of the end of the allowable time period.

36 (G) An imminently threatened structure or property may be protected only once, regardless of  
37 ownership, unless the threatened structure or property is located in a community that is

1 actively pursuing a beach nourishment project, or an inlet relocation or stabilization project  
2 in accordance with Part (H) of this Subparagraph. Existing temporary erosion control  
3 structures may be permitted for additional eight-year periods provided that the structure or  
4 property being protected is still imminently threatened, the temporary erosion control  
5 structure is in compliance with requirements of this Subchapter, and the community in  
6 which it is located is actively pursuing a beach nourishment or an inlet relocation or  
7 stabilization project in accordance with Part (H) of this Subparagraph. In the case of a  
8 building, a temporary erosion control structure may be extended, or new segments  
9 constructed, if additional areas of the building become imminently threatened. Where  
10 temporary structures are installed or extended incrementally, the time period for removal  
11 under Part (F) or (H) of this Subparagraph shall begin at the time the initial erosion control  
12 structure was installed. For the purpose of this Rule:

- 13 (i) a building and its septic system shall be considered separate structures,
- 14 (ii) a road or highway may be incrementally protected as sections become imminently  
15 threatened. The time period for removal of each contiguous section of temporary  
16 erosion control structure shall begin at the time that the initial section was  
17 installed, in accordance with Part (F) of this Subparagraph.

18 (H) For purposes of this Rule, a community is considered to be actively pursuing a beach  
19 nourishment or an inlet relocation or stabilization project in accordance with G.S. 113A-  
20 115.1 if it:

- 21 (i) has been issued an active CAMA permit, where necessary, approving such  
22 project; or
- 23 (ii) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment  
24 Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage  
25 Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of  
26 Engineers and a commitment of local or federal money, when necessary; or
- 27 (iii) has received a favorable economic evaluation report on a federal project; or
- 28 (iv) is in the planning stages of a project designed by the U.S. Army Corps of  
29 Engineers or persons meeting applicable State occupational licensing  
30 requirements and initiated by a local government or community with a  
31 commitment of local or state funds to construct the project or the identification of  
32 the financial resources or funding bases necessary to fund the beach nourishment,  
33 inlet relocation or stabilization project.

34 If beach nourishment, inlet relocation or stabilization is rejected by the sponsoring agency  
35 or community, or ceases to be actively planned for a section of shoreline, the time extension  
36 is void for that section of beach or community and existing sandbags are subject to all  
37 applicable time limits set forth in Part (F) of this Subparagraph.

- 1 (I) Once a temporary erosion control structure is determined by the Division of Coastal  
2 Management to be unnecessary due to relocation or removal of the threatened structure, it  
3 shall be removed to the maximum extent practicable by the property owner within 30 days  
4 of official notification from the Division of Coastal Management regardless of the time  
5 limit placed on the temporary erosion control structure. If the temporary erosion control  
6 structure is determined by the Division of Coastal Management to be unnecessary due to  
7 the completion of a storm protection project constructed by the U.S. Army Corps of  
8 Engineers, a large-scale beach nourishment project, or an inlet relocation or stabilization  
9 project, any portion of the temporary erosion control structure exposed above grade shall  
10 be removed by the property owner within 30 days of official notification from the Division  
11 of Coastal Management regardless of the time limit placed on the temporary erosion control  
12 structure.
- 13 (J) Removal of temporary erosion control structures is not required if they are covered by sand.  
14 Any portion of the temporary erosion control structure that becomes exposed above grade  
15 after the expiration of the permitted time period shall be removed by the property owner  
16 within 30 days of official notification from the Division of Coastal Management.
- 17 (K) The property owner shall be responsible for the removal of remnants of all portions of any  
18 damaged temporary erosion control structure.
- 19 (L) Sandbags used to construct temporary erosion control structures shall be tan in color and  
20 three to five feet wide and seven to 15 feet long when measured flat. Base width of the  
21 temporary erosion control structure shall not exceed 20 feet, and the total height shall not  
22 exceed six feet, as measured from the bottom of the lowest bag.
- 23 (M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- 24 (N) Existing sandbag structures may be repaired or replaced within their originally permitted  
25 dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.
- 26 (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size  
27 and in accordance with Rule .0312 of this Section.
- 28 (4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from  
29 any point seaward of the ~~first line of stable~~ vegetation line to create a protective sand dike or to  
30 obtain material for any other purpose) is development and may be permitted as an erosion response  
31 if the following conditions are met:
- 32 (A) The area on which this activity is being performed shall maintain a slope of adequate grade  
33 so as to not endanger the public or the public's use of the beach and shall follow the pre-  
34 emergency slope as closely as possible. The movement of material utilizing a bulldozer,  
35 front end loader, backhoe, scraper, or any type of earth moving or construction equipment  
36 shall not exceed one foot in depth measured from the pre-activity surface elevation;

- 1 (B) The activity shall not exceed the lateral bounds of the applicant's property unless ~~he has~~  
2 permission ~~of~~ is obtained from the adjoining land owner(s);
- 3 (C) Movement of material from seaward of the mean low water line will require a CAMA  
4 Major Development and State Dredge and Fill Permit;
- 5 (D) The activity shall not increase erosion on neighboring properties and shall not have an  
6 adverse effect on natural or cultural resources;
- 7 (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well  
8 as the threatened structure's foundations.

9 (b) ~~Dune Establishment~~ Protection, Establishment, Restoration and Stabilization.

10 (1) No development shall be permitted that involves the removal or relocation of primary or frontal  
11 dune sand or vegetation thereon that would adversely affect the integrity of the dune. Other dunes  
12 within the ocean hazard area shall not be disturbed unless the development of the property is  
13 otherwise impracticable. Any disturbance of these other dunes shall be allowed only to the extent  
14 permitted by this Rule.

15 ~~(1)(2)~~ Any new dunes established shall be aligned to the greatest extent possible with existing adjacent  
16 dune ridges and shall be of the same configuration as adjacent natural dunes.

17 ~~(2)(3)~~ Existing primary and frontal dunes shall not, except for beach nourishment and emergency  
18 situations, be broadened or extended in an oceanward direction.

19 ~~(3)(4)~~ Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is  
20 minimized. The filled areas shall be replanted or temporarily stabilized until planting can be  
21 completed.

22 ~~(4)(5)~~ Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand  
23 in the area in which it is to be placed.

24 ~~(5)(6)~~ No new dunes shall be created in inlet hazard areas. Reconstruction or repair [if] of existing dune  
25 systems [ad] as defined in Rule .0305 of this Section and within the Inlet Hazard Area is permissible.

26 ~~(6)(7)~~ Sand held in storage in any dune, other than the frontal or primary dune, shall remain on the lot or  
27 tract of land to the maximum extent practicable and may be redistributed within the Ocean Hazard  
28 AEC provided that it is not placed any farther oceanward than the crest of a primary dune, if present,  
29 or the crest of a frontal dune.

30 ~~(7)(8)~~ No disturbance of a dune area shall be allowed when other techniques of construction can be utilized  
31 and alternative site locations exist to avoid dune impacts.

32 (c) Structural Accessways:

33 (1) Structural accessways shall be permitted across primary or frontal dunes so long as they are designed  
34 and constructed in a manner that entails negligible alteration of the primary or frontal dune.  
35 Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a)  
36 of this Rule.

1 (2) An accessway shall be considered to entail negligible alteration of primary or frontal dunes provided  
2 that:

3 (A) The accessway is exclusively for pedestrian use;

4 (B) The accessway is a maximum of six feet in width;

5 (C) Except in the case of beach matting for a local, State, or federal government's public access,  
6 the accessway is raised on posts or pilings of five feet or less depth, so that wherever  
7 possible only the posts or pilings touch the dune. ~~Where this is deemed by the Division of~~  
8 ~~Coastal Management to be impossible due to dune, in accordance with~~ any more restrictive  
9 local, State, or federal building requirements, ~~the structure shall touch the dune only to the~~  
10 ~~extent necessary.~~ requirements. Beach matting for a local, State, or federal government's  
11 public access shall be installed at grade and not involve any excavation or fill of the dune;  
12 and

13 (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.

14 (3) An accessway that does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it  
15 meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this  
16 Paragraph. Public fishing piers are ~~not prohibited~~ allowed provided all other applicable standards of  
17 this Rule are met.

18 (4) In order to preserve the protective nature of primary and frontal dunes a structural accessway (such  
19 as a "Hatteras ramp") may be provided for off-road vehicle (ORV) or emergency vehicle access.  
20 Such accessways shall be no greater than 15 feet in width and may be constructed of wooden  
21 sections fastened together, or other materials approved by the Division, over the length of the  
22 affected dune area. Installation of a Hatteras ramp shall be done in a manner that will preserve the  
23 dune's function as a protective barrier against flooding and erosion by not reducing the volume of  
24 the dune.

25 (5) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the  
26 frontal or primary dune, provided they do not interfere with public trust rights and emergency access  
27 along the beach. Structural accessways are not restricted by the requirement to be landward of the  
28 FLSNV as described in Rule .0309(a) of this Section.

29 (d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) of  
30 this Section and 15A NCAC 07J .0210 shall comply with the following standards:

31 (1) In order to avoid danger to life and property, all development shall be designed and placed so as to  
32 minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any  
33 building constructed within the ocean hazard area shall comply with relevant sections of the North  
34 Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local  
35 flood damage prevention ordinance as required by the National Flood Insurance Program. If any  
36 provision of the building code or a flood damage prevention ordinance is inconsistent with any of  
37 the following AEC standards, the more restrictive provision shall control.

- 1 (2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if  
2 round or eight inches to a side if square.
- 3 (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation  
4 under the structure. For those structures so located on or seaward of the primary dune, the pilings  
5 shall extend to five feet below mean sea level.
- 6 (4) All foundations shall be designed to be stable during applicable fluctuations in ground elevation and  
7 wave forces during a 100-year storm. Cantilevered decks and walkways shall meet the requirements  
8 of this Part or shall be designed to break-away without structural damage to the main structure.

9

10 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-124;*  
11 *Eff. June 1, 1979;*  
12 *Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on December 17,*  
13 *1989;*  
14 *Amended Eff. August 3, 1992; December 1, 1991; March 1, 1990; December 1, 1989;*  
15 *RRC Objection Eff. November 19, 1992 due to ambiguity;*  
16 *RRC Objection Eff. January 21, 1993 due to ambiguity;*  
17 *Amended Eff. March 1, 1993; December 28, 1992;*  
18 *RRC Objection Eff. March 16, 1995 due to ambiguity;*  
19 *Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995;*  
20 *Temporary Amendment Eff. July 3, 2000; May 22, 2000;*  
21 *Amended Eff. April 1, 2019; May 1, 2013; July 1, 2009; April 1, 2008; February 1, 2006; August 1,*  
22 *2002;*  
23 *Readopted Eff. December 1, 2020;*  
24 *Amended Eff. July 1, 2022; December 1, 2021.*

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0309

**DEADLINE FOR RECEIPT: Friday, June 10, 2022**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Subparagraph (b)(2), line 33, add a comma after "vegetation line". End (b)(4) with a colon. Add "and" at the end of (b)(4)(C). Add an oxford comma after "knee braced" on line 12. Delete "if applicable" on line 15 and "only" on line 20.*

*Paragraph (e), add an oxford comma after .1200.*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: June 6, 2022



1 15A NCAC 07H .0309 is amended as published in 36:14 NCR 1231-1233 as follows:

2  
3 **15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS**

4 (a) The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule  
5 .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:

- 6 (1) campsites;
- 7 (2) driveways and parking areas with clay, packed sand, or gravel;
- 8 (3) elevated decks not exceeding a footprint of 500 square ~~feet;~~ feet. Existing decks exceeding a  
9 footprint of 500 square feet may be replaced with no enlargement beyond their original dimensions;
- 10 (4) beach accessways consistent with Rule .0308(c) of this Section;
- 11 (5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
- 12 (6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed  
13 sand or gravel, and a footprint of 200 square feet or less;
- 14 (7) temporary amusement stands consistent with Section .1900 of this Subchapter;
- 15 (8) sand fences; ~~and~~
- 16 (9) swimming ~~pools;~~ pools; and
- 17 (10) fill not associated with dune creation that is obtained from an upland source and is of the same  
18 general characteristics as the sand in the area in which it is to be placed.

19 In all cases, this development shall be permitted only if it is landward of the vegetation line or ~~static pre-project~~  
20 ~~vegetation line, whichever is applicable; involves no alteration or removal of primary or frontal dunes which would~~  
21 ~~compromise the integrity of the dune as a protective landform or the dune vegetation; has overwalks to protect any~~  
22 ~~existing dunes; is not essential to the continued existence or use of an associated principal development; is not required~~  
23 ~~to satisfy minimum requirements of local zoning, subdivision or health regulations; and meets all other non-setback~~  
24 requirements of this Subchapter.

25 (b) Where application of the oceanfront setback requirements of Rule .0306(a) of this Section would preclude  
26 placement of ~~permanent substantial structures on lots~~ a structure on a lot existing as of June 1, 1979, ~~buildings the~~  
27 ~~structure~~ shall be permitted seaward of the applicable setback line in ~~ocean erodible areas and~~ Ocean Erodible Areas,  
28 State Ports Inlet Management Areas, and Inlet Hazard Areas, but not ~~inlet hazard areas or unvegetated beach areas,~~  
29 Unvegetated Beach Areas if each of the following conditions are met:

- 30 (1) The development is set back from the ocean the maximum feasible distance possible on the existing  
31 lot and the development is designed to minimize encroachment into the setback area;
- 32 (2) The development is at least 60 feet landward of the vegetation ~~line or static vegetation~~ line,  
33 measurement line, or pre-project vegetation line whichever is applicable;
- 34 (3) The development is not located on or ~~in front~~ oceanward of a frontal dune, but is entirely behind  
35 the landward toe of the frontal dune;
- 36 (4) The development incorporates each of the following design standards, which are in addition to those  
37 required by Rule .0308(d) of this Section.

1 (A) All pilings shall have a tip penetration that extends to at least four feet below mean sea  
2 level;

3 (B) The footprint of the structure shall be no more than 1,000 square feet, and the total floor  
4 area of the structure shall be no more than 2,000 square feet. For the purpose of this Section,  
5 roof-covered decks and porches that are structurally attached shall be included in the  
6 calculation of footprint;

7 (C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in  
8 those cases where the development does not abut the ocean and is located landward of a  
9 paved public street or highway currently in use. In those ~~cases concrete, asphalt, or~~  
10 ~~turfstone may also~~ cases, other material may be used;

11 (D) No portion of a building's total floor area, including elevated portions that are cantilevered,  
12 knee braced or otherwise extended beyond the support of pilings or footings, may extend  
13 oceanward of the total floor area of the landward-most ~~adjacent building.~~ habitable building  
14 or structure. The alignment shall be measured from the most oceanward point of the  
15 adjacent building or structure's roof line, including roofed decks, if applicable. An  
16 "adjacent" property is one that shares a boundary line with the site of the proposed  
17 development. When no adjacent building or structure exists, or the geometry or orientation  
18 of a lot or shoreline precludes the placement of a building in line with the landward most  
19 adjacent structure of similar use, an average line of construction shall be determined by the  
20 Division of Coastal Management on a case by case basis in order to determine an only by  
21 the Director of the Division of Coastal Management based on an approximation of the  
22 average seaward-most positions of the rooflines of adjacent structures along the same  
23 shoreline, extending 500 feet in either direction. If no structures exist within this distance,  
24 the proposed structure shall meet the applicable setback from the Vegetation Line but shall  
25 not be held to the landward-most adjacent structure or an average line of structures. The  
26 ocean hazard setback that is shall extend landward of the vegetation line, static vegetation  
27 line or measurement line, whichever is applicable, a distance no less than 60 feet.

28 (5) All other provisions of this Subchapter and other state and local regulations are met. If the  
29 development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such  
30 a system shall be submitted as part of the CAMA permit application.

31 (c) The following types of water dependent development shall be permitted seaward of the oceanfront setback  
32 requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local  
33 regulations are met:

34 (1) piers providing public access; and

35 (2) maintenance and replacement of existing state-owned bridges, and causeways and accessways to  
36 such bridges.

1 (d) Replacement or construction of a pier house associated with an ocean pier shall be permitted if each of the  
2 following conditions is met:

- 3 (1) The ocean pier provides public access for fishing and other recreational purposes whether on a  
4 commercial, public, or nonprofit basis;
- 5 (2) Commercial, non-water dependent uses of the ocean pier and associated pier house shall be limited  
6 to restaurants and retail services. Residential uses, lodging, and parking areas shall be prohibited;
- 7 (3) The pier house shall be limited to a maximum of two stories;
- 8 (4) A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of  
9 mean high water;
- 10 (5) A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of  
11 5,000 square feet, whichever is larger;
- 12 (6) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and
- 13 (7) If the pier has been destroyed or rendered unusable, replacement or expansion of the associated pier  
14 house shall be permitted only if the pier is being replaced and returned to its original function.

15 (e) In addition to the development authorized under Paragraph (d) of this Rule, small scale, non-essential development  
16 that does not induce further growth in the Ocean Hazard Area, such as the construction of single family piers and  
17 small scale erosion control measures that do not interfere with natural oceanfront processes, shall be permitted ~~on~~  
18 those non-oceanfront in the Ocean Hazard Area along those portions of shoreline that exhibit features characteristic  
19 of an Estuarine Shoreline. Such features include the presence of wetland vegetation, and lower wave energy and  
20 erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set  
21 out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are  
22 eligible for authorization under 15A NCAC 07H .1100, .1200 and 15A NCAC 07K .0203.

23 (f) Transmission lines necessary to transmit electricity from an offshore energy-producing facility may be permitted  
24 provided that each of the following conditions is met:

- 25 (1) The transmission lines are buried under the ocean beach, nearshore area, and primary and frontal  
26 dunes, all as defined in Rule .0305 of this Section, in such a manner so as to ensure that the  
27 placement of the transmission lines involves no alteration or removal of the primary or frontal dunes;  
28 and
- 29 (2) The design and placement of the transmission lines shall be performed in a manner so as not to  
30 endanger the public or the public's use of the beach.

31 (g) Existing stormwater outfalls as of the last amended date of this rule within the Ocean Hazard AEC that are owned  
32 or maintained by a State agency or local government, may be extended oceanward subject to the provisions contained  
33 within 15A NCAC 07J .0200. Outfalls may be extended below mean low water and may be maintained in accordance  
34 with 15A NCAC 07K .0103. Shortening or lengthening of outfall structures within the authorized dimensions, in  
35 response to changes in beach width, is considered maintenance under 15A NCAC 07K .0103. Outfall extensions may  
36 be marked with signage and shall not prevent pedestrian or vehicular access along the beach. This Paragraph does not  
37 apply to existing stormwater outfalls that are not owned or maintained by a State agency or local government.

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*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a; 113A-113(b)(6)b; 113A-113(b)(6)d; 113A-124; Eff. February 2, 1981; Amended Eff. April 1, 2020; June 1, 2010; February 1, 2006; September 17, 2002 pursuant to S.L. 2002-116; August 1, 2000; August 1, 1998; April 1, 1996; April 1, 1995; February 1, 1993; January 1, 1991; April 1, 1987; Readopted Eff. December 1, 2020; Amended Eff. July 1, 2022.*

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0310

**DEADLINE FOR RECEIPT: Friday, June 10, 2022**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Subparagraph (a)(4), include an "and" after the semicolon.*

*Paragraph (b), us "or" instead of "nor".*

*Paragraph (c), add an oxford comma after .1200.*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: June 6, 2022

1 15A NCAC 07H .0310 is amended as published in 36:14 NCR 1233 as follows:

2  
3 **15A NCAC 07H .0310 USE STANDARDS FOR INLET HAZARD AREAS**

4 (a) Inlet Hazard Areas of Environmental Concern as defined by Rule .0304 of this Section are subject to inlet  
5 migration, rapid and severe changes in watercourses, flooding and strong tides. Due to ~~this~~ the extremely hazardous  
6 nature of the Inlet Hazard Areas, all development within these areas shall be permitted in accordance with the  
7 following standards:

- 8 (1) All development in the inlet hazard area shall be set back from the ~~first line of stable natural~~  
9 vegetation line a distance equal to the setback required in the adjacent ocean hazard area;
- 10 (2) Permanent structures shall be permitted at a density of no more than one commercial or residential  
11 unit per 15,000 square feet of land area on lots subdivided or created after July 23, 1981;
- 12 (3) Only residential structures of four units or less or non-residential structures of less than 5,000 square  
13 feet total floor area shall be allowed within the inlet hazard area, except that access roads to those  
14 areas and maintenance and replacement of existing bridges shall be allowed;
- 15 (4) Established common-law and statutory public rights of access to the public trust lands and waters  
16 in Inlet Hazard Areas shall not be eliminated or restricted. Development shall not encroach upon  
17 public accessways nor shall it limit the intended use of the accessways;
- 18 (5) All other rules in this Subchapter pertaining to development in the ocean hazard areas shall be  
19 applied to development within the Inlet Hazard Areas.

20 (b) The inlet hazard area setback requirements shall not apply to the types of development exempted from the ocean  
21 setback rules in 15A NCAC 07H .0309(a), nor, to the types of development listed in 15A NCAC 07H .0309(c).

22 (c) In addition to the types of development excepted under Rule .0309 of this Section, small scale development that  
23 does not induce further growth in the Inlet Hazard Area, such as the construction of single-family piers and small scale  
24 erosion control measures that do not interfere with natural inlet movement, may be permitted on those portions of  
25 shoreline within a designated Inlet Hazard Area that exhibit features characteristic of Estuarine Shoreline. Such  
26 features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining  
27 Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this  
28 Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization  
29 under 15A NCAC 07H .1100, .1200 and 07K .0203.

30  
31 *History Note:*

32 *Authority G.S. 113A-107; 113A-113(b); 113A-124;*

33 *Eff. December 1, 1981;*

34 *Emergency Rule Eff. September 11, 1981, for a period of 120 days to expire on January 8, 1982;*

35 *Temporary Amendment Eff. October 30, 1981, for a period of 70 days to expire on January 8, 1982;*

36 *Amended Eff. April 1, 1999; April 1, 1996; December 1, 1992; December 1, 1991; March 1, 1988;*

37 *Readopted Eff. December 1, 2020;*



**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1205

**DEADLINE FOR RECEIPT: Friday, June 10, 2022**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*The page numbers in the footer should be consistent with the other rules. "1 of 4" instead of "1".*

*Paragraph (i), "at least 18 inches at normal low water level or normal water level" can be interpreted in many ways. Can more specificity be added?*

*Paragraph (j), "six feet of any dimension" is unclear. What exactly is the requirement?*

*Paragraph (l), line 8, is "Normal High Water Level" intended?*

*Paragraph (p), line 21, change "nor" to "or".*

*Subparagraph (u)(1) through (3), delete period and add a semicolon. In Subparagraph (4), add a semicolon "and".*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: June 6, 2022



1 15A NCAC 07H .1205 is amended as published in 36:13 NCR 1124-1126 as follows:

2  
3 **15A NCAC 07H .1205 SPECIFIC CONDITIONS**

4 (a) Piers and docking facilities may extend or be located up to a maximum of 400 feet waterward from the normal  
5 high water line or the normal water level, whichever is applicable.

6 (b) Piers and docking facilities shall not extend beyond the established pier length along the same shoreline for similar  
7 use. This restriction shall not apply to piers and docking facilities 100 feet or less in length unless necessary to avoid  
8 interference with navigation or other uses of the waters by the public such as blocking established navigation routes  
9 or interfering with access to adjoining properties as determined by the Division of Coastal Management. The length  
10 of piers and docking facilities shall be measured from the waterward edge of any wetlands that border the water body.

11 (c) Piers and docking facilities longer than 200 feet shall be permitted only if the proposed length gives access to  
12 deeper water at a rate of at least one foot at each 100 foot increment of pier length longer than 200 feet, or if the  
13 additional length is necessary to span some obstruction to navigation. Measurements to determine pier and docking  
14 facility lengths shall be made from the waterward edge of any coastal wetland vegetation that borders the water body.

15 (d) Piers shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate  
16 as measured from the bottom of the decking.

17 (e) The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be 8  
18 square feet per linear foot of shoreline with a maximum of 800 square feet. In calculating the shaded impact, uncovered  
19 open water slips shall not be counted in the total.

20 (f) The maximum size of any individual component of the docking facility authorized by this general permit shall not  
21 exceed 400 square feet.

22 (g) Docking facilities shall not be constructed in a designated Primary Nursery Area with less than two feet of water  
23 at normal low water level or normal water level under the general permit set forth in this Section without prior approval  
24 from the Division of Marine Fisheries or the Wildlife Resources Commission.

25 (h) Piers and docking facilities located over shellfish beds or submerged aquatic vegetation as defined by the Marine  
26 Fisheries Commission may be constructed without prior consultation from the Division of Marine Fisheries or the  
27 Wildlife Resources Commission if the following two conditions are met:

28 (1) Water depth at the docking facility location is equal to or greater than two feet of water at normal  
29 low water level or normal water level; and

30 (2) The pier and docking facility is located to minimize the area of submerged aquatic vegetation or  
31 shellfish beds under the structure as determined by the Division of Coastal Management.

32 (i) Floating piers and floating docking facilities located in Primary Nursery Areas, over shellfish beds, or over  
33 submerged aquatic vegetation shall be allowed if the water depth between the bottom of the proposed structure and  
34 the substrate is at least 18 inches at normal low water level or normal water level.

35 (j) Docking facilities shall have no more than six feet of any dimension extending over coastal wetlands and shall be  
36 elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.

1 (k) The width requirements established in Paragraph (d) of this Rule shall not apply to pier structures in existence on  
2 or before July 1, 2001 when structural modifications are needed to prevent or minimize storm damage. In these cases,  
3 pilings and cross bracing may be used to provide structural support as long as they do not extend more than two feet  
4 on either side of the principal structure. These modifications shall not be used to expand the floor decking of platforms  
5 and piers.

6 (l) Boathouses shall not exceed a combined total of 400 square feet and shall have sides extending no further than  
7 one-half the height of the walls as measured in a downward direction from the top wall plate or header to the Normal  
8 Water Level or Normal High Water and only covering the top half of the walls. Measurements of square footage shall  
9 be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of  
10 shoreline. Structural boat covers, utilizing frame-supported fabric covering, can be permitted on properties with less  
11 than 75 linear feet of shoreline when using screened fabric for side walls.

12 (m) The area enclosed by a boat lift shall not exceed 400 square feet.

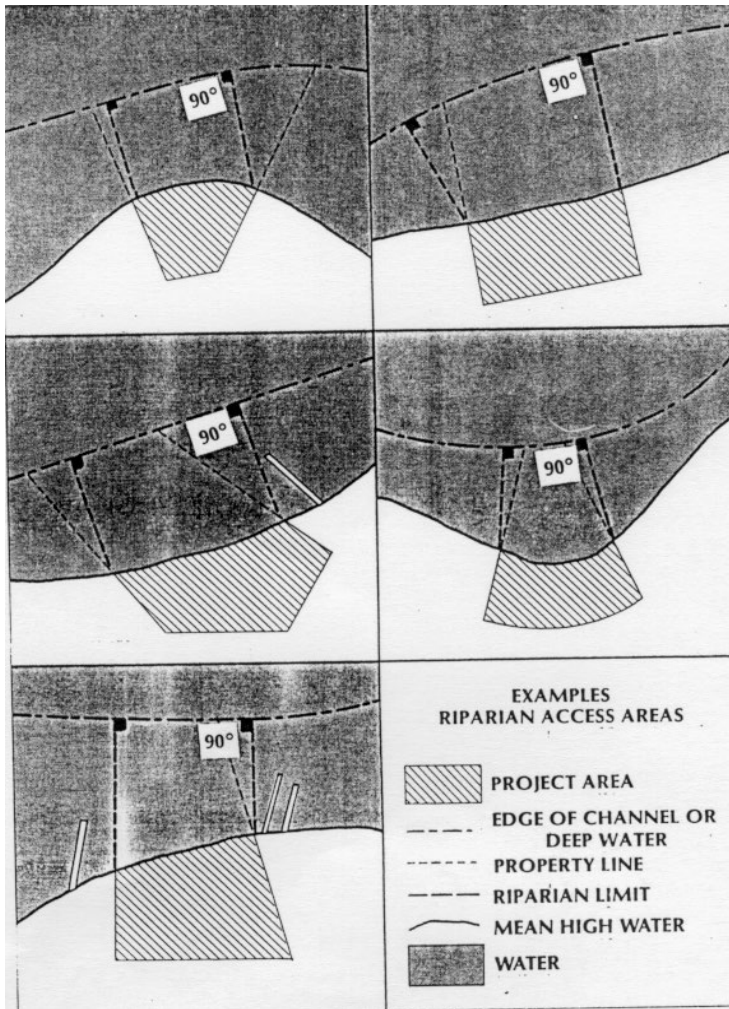
13 (n) Piers and docking facilities shall be single story. They may be roofed but shall not allow second story use.

14 (o) Pier and docking facility alignments along federally maintained channels shall also meet Corps of Engineers  
15 regulations for construction pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

16 (p) Piers and docking facilities shall in no case extend more than 1/4 the width of a natural water body, human-made  
17 canal, or basin. Measurements to determine widths of the water body, human-made canals, or basins shall be made  
18 from the waterward edge of any coastal wetland vegetation which borders the water body. The 1/4 length limitation  
19 shall not apply when the proposed pier and docking facility is located between longer structures within 200 feet of the  
20 applicant's property. However, the proposed pier and docking facility shall not be longer than the pier head line  
21 established by the adjacent piers and docking facilities nor longer than 1/3 the width of the water body.

22 (q) Piers and docking facilities shall not interfere with the access to any riparian property, and shall have a minimum  
23 setback of 15 feet between any part of the pier and docking facility and the adjacent property lines extended into the  
24 water at the points that they intersect the shoreline. The minimum setbacks provided in this Paragraph may be waived  
25 by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants.  
26 Should the adjacent property be sold before construction of the pier commences, the applicant shall obtain a written  
27 agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management  
28 prior to initiating any development of the pier or docking facility. The line of division of areas of riparian access shall  
29 be established by drawing a line along the channel or deep water in front of the property, then drawing a line  
30 perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets  
31 the water's edge. Application of this Rule may be aided by reference to the diagram in Paragraph (t) of this Rule  
32 illustrating the Rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the  
33 Division of Coastal Management website at <http://www.nccoastalmanagement.net>. When shoreline configuration is  
34 such that a perpendicular alignment cannot be achieved, the pier or docking facility shall be aligned to meet the intent  
35 of this Rule to the maximum extent practicable.

- 1 (r) Piers and docking facilities shall provide docking space for no more than two boats, as defined in 15A NCAC  
 2 07M .0602(a), except when stored on a platform that has already been accounted for within the shading impacts  
 3 condition of this general permit. Boats stored on floating or fixed platforms shall not count as docking spaces.  
 4 (s) Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application  
 5 to the owner of any part of a shellfish franchise or lease over which the proposed pier or docking facility would extend.  
 6 The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the  
 7 lease.  
 8 (t) The diagram shown below illustrates various shoreline configurations:  
 9



- 10  
 11  
 12 (u) Shared piers or docking facilities shall be allowed, provided that in addition to complying with Paragraphs (a)  
 13 through (t) of this Rule the following shall also apply:  
 14 (1) The shared pier or docking facility shall be confined to two adjacent riparian property owners and  
 15 the landward point of origination of the structure shall overlap the shared property line.

- 1           (2)     Shared piers and docking facilities shall be designed to provide docking space for no more than four  
2                   boats.
- 3           (3)     The total square footage of shaded impact for docks and mooring facilities shall be calculated using  
4                   Paragraph (e) of this Rule and in addition shall allow for combined shoreline of both properties.
- 5           (4)     The property owners of the shared pier shall not be required to obtain a 15-foot waiver from each  
6                   other as described in Paragraph (q) of this Rule as is applies to the shared riparian line for any work  
7                   associated with the shared pier, provided that the title owners of both properties have executed a  
8                   shared pier agreement that has become a part of the permit file.
- 9           (5)     The construction of a second access pier or docking facility not associated with the shared pier shall  
10                  not be authorized under the general permit set forth in this Section.

11

12   *History Note:     Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*  
13                   *Eff. March 1, 1984;*  
14                   *Amended Eff. December 1, 1991; May 1, 1990; March 1, 1990;*  
15                   *RRC Objection due to ambiguity Eff. March 18, 1993;*  
16                   *Amended Eff. August 1, 1998; April 23, 1993;*  
17                   *Temporary Amendment Eff. December 20, 2001;*  
18                   *Amended Eff. August 1, 2014; July 1, 2009; April 1, 2003;*  
19                   *Readopted Eff. December 1, 2021;*  
20                   *Amended Eff. July 1, 2022.*

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1801

**DEADLINE FOR RECEIPT: Friday, June 10, 2022**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*The comma after "beach bulldozing project", line 12, seems unnecessary.*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: June 6, 2022

1 15A NCAC 07H .1801 is amended as published in 36:13 NCR 1126 as follows:

2

3 **SECTION .1800 - GENERAL PERMIT TO ALLOW BEACH BULLDOZING IN THE OCEAN HAZARD**  
4 **AEC**

5

6 **15A NCAC 07H .1801 PURPOSE**

7 This permit will allow beach bulldozing needed to reconstruct or repair dune systems, as defined in Rule .0305 of this  
8 Subchapter. For the purpose of this general permit, "beach bulldozing" is defined as the process of moving natural  
9 beach material from any point seaward of the first line of stable vegetation to repair damage to frontal or primary  
10 dunes. This general permit is subject to the procedures outlined in Subchapter ~~07J .1100 and shall apply only to the~~  
11 ~~Ocean Erodible AEC. This general permit shall not apply to the Inlet Hazard AEC. 07J .1100, and shall not apply~~  
12 where a town or community has a Major Permit for either an ongoing beach bulldozing project, or project completed  
13 within thirty days of a request for a General Permit.

14

15 *History Note: Authority G.S. 113-229(cl); 113A-107;113A-113(b); 113A-118.1;*

16 *Eff. December 1, 1987;*

17 *Amended Eff. September 1, 2016.;*

18 *Readopted Eff. April 1, 2022;*

19 *Amended Eff. July 1, 2022.*

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0403

**DEADLINE FOR RECEIPT: Friday, June 10, 2022**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Should G.S. 113-229, line 13, be added to the History Note: Authority?*

*Based on what factors/criteria is the requirements of paragraph (c) "determined by the Division." Where are these found?*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: June 6, 2022

1 15A NCAC 07J .0403 is amended with changes as published in 36:13 NCR 1126-1127 as follows:

2  
3 **15A NCAC 07J .0403 DEVELOPMENT PERIOD/COMMENCEMENT/CONTINUATION**

4 (a) ~~New dredge and fill permits and CAMA permits, excepting Major permits shall expire five years from the date of~~  
5 ~~permit issuance, with the exception of publicly-sponsored, multi-phased beach nourishment projects, which shall~~  
6 ~~expire 10 years from the date of permit issuance. Minor permits, except those authorizing beach bulldozing when~~  
7 ~~authorized through issuance of a CAMA minor permit, shall expire on December 31 of the third year following the~~  
8 ~~year of permit issuance.~~

9 (b) CAMA minor ~~permit permits~~ authorizing beach bulldozing shall expire 30 days from the date of permit issuance.  
10 Following permit expiration, the ~~applicant may request~~ permit holder is entitled to request an extension in accordance  
11 with Rule .0404(a) of this Section.

12 (c) Development After Permit Expiration. Any development undertaken after permit expiration shall be considered  
13 unpermitted and shall constitute a violation of G.S. 113A-118 or G.S. 113-229. Any development to be undertaken  
14 after permit expiration shall require ~~either a new permit, or extension of the original permit according to 15A NCAC~~  
15 ~~07J .0404 with the exception of Paragraph (e) of this Rule. a new [permit] permit or review in accordance with 15A~~  
16 ~~NCAC 07J .0404(c) as determined by the Division.~~

17 (d) Commencement of Development in Ocean Hazard AEC. No development shall begin until the oceanfront setback  
18 requirement can be ~~met~~ established in accordance with 15A NCAC 07H .0306. When the permit holder or an  
19 individual receiving an exception ~~to the permit requirement~~ is ready to begin development, they shall arrange an onsite  
20 meeting with the Division of Coastal Management or Local Permitting Officer to determine the oceanfront setback.  
21 This setback determination shall replace the one completed at the time the permit was processed and approved and  
22 development shall begin within ~~of~~ 60 days from the date of that meeting. In the case of a shoreline change that ~~alters~~  
23 ~~the location of the permitted development a new setback determination may be required.~~ reduces the determined  
24 setback; a new setback determination may be required. To determine if a new setback is required, additional  
25 coordination with the Division of Coastal Management or Local Permitting Officer shall be ~~required.~~ Upon completion  
26 ~~of the measurement, the Division of Coastal Management or Local Permitting Officer will issue a written statement~~  
27 ~~to the permittee certifying the same.~~ required before development begins.

28 ~~(e) Continuation of Development in the Ocean Hazard AEC. Once permitted development has begun, development~~  
29 ~~in the Ocean Hazard AEC may continue beyond the authorized development period if, in the opinion of the Division~~  
30 ~~of Coastal Management or Local Permitting Officer, substantial progress has been made and is continuing according~~  
31 ~~to customary and usual building standards and schedules. Substantial progress is defined as beginning with the~~  
32 ~~placement of foundation pilings, and proof of the local building inspector's certification that the installed pilings have~~  
33 ~~passed a floor and foundation inspection.~~

34 ~~(f)(c)~~ Any permit that has been ~~stayed~~ suspended as a result of litigation shall be extended at the permit holder's  
35 written request for a period equivalent to the period of permit suspension, but not to exceed the development period  
36 authorized under Paragraph (a) of this Rule.



1 *History Note: Authority G.S. 113A-118; 113A-124(c)(8);*  
2 *Eff. March 15, 1978;*  
3 *Amended Eff. August 1, 2002; April 1, 1995; July 1, 1989; March 1, 1985; November 1, 1984;*  
4 *Readopted Eff. August 1, 2021;*  
5 *Amended Eff. July 1, 2022.*

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0404

**DEADLINE FOR RECEIPT: Friday, June 10, 2022**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Subparagraph (c)(3), "if appropriate" seems unnecessary. Delete.*

*Should either of the statutes on line 19 be included in the History Note: Authority?*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: June 6, 2022

1 15A NCAC 07J .0404 is amended as published in 36:13 NCR 1127-1128 as follows:

2  
3 **15A NCAC 07J .0404 DEVELOPMENT PERIOD EXTENSION**

4 (a) For CAMA minor permits authorizing beach bulldozing, the permit holder ~~may~~ is entitled to request a one-time  
5 30-day permit extension. No additional extensions shall be granted after the 30-day extension has expired.  
6 Notwithstanding this Paragraph, the permit holder ~~may~~ is eligible to apply for another minor permit authorizing beach  
7 bulldozing following expiration of the 30-day permit extension.

8 ~~(b) Where no development has been initiated during the development period, the Division of Coastal Management or~~  
9 ~~Local Permit Officer shall extend the authorized development period for no more than two years upon receipt of a~~  
10 ~~signed and dated request from the applicant containing the following:~~

11 (1) ~~\_\_\_\_\_ a statement of the intention of the applicant to complete the work.~~

12 (2) ~~\_\_\_\_\_ a statement of the reasons why the project will not be completed before the expiration of the current~~  
13 ~~permit;~~

14 (3) ~~\_\_\_\_\_ a statement that there has been no change of plans since the issuance of the original permit other~~  
15 ~~than changes that would have the effect of reducing the scope of the project or previously approved~~  
16 ~~permit modifications;~~

17 (4) ~~\_\_\_\_\_ notice of any change in ownership of the property to be developed and a request for transfer of the~~  
18 ~~permit, if appropriate; and~~

19 (5) ~~\_\_\_\_\_ a statement that the project is in compliance with all conditions of the current permit.~~

20 ~~Where substantial development, either within or outside the AEC, has begun and is continuing on a permitted project,~~  
21 ~~the permitting authority shall grant as many two year extensions as necessary to complete the initial development. For~~  
22 ~~the purpose of this Rule, "substantial development" shall be deemed to have occurred on a project if the permittee can~~  
23 ~~show that development has progressed beyond basic site preparation, such as land clearing and grading, and~~  
24 ~~construction has begun and is continuing on the primary structure or structures authorized under the permit. For~~  
25 ~~purposes of residential subdivision, installation of subdivision roads consistent with an approved subdivision plat shall~~  
26 ~~constitute substantial development. Renewals for maintenance and repairs of previously approved projects may be~~  
27 ~~granted for periods not to exceed 10 years.~~

28 ~~(b) All other CAMA permits may be extended where substantial development, either within or outside the AEC, has~~  
29 ~~begun or is continuing. The permitting authority shall grant as many two-year extensions as necessary to complete the~~  
30 ~~initial development, with the exception that multi-phased beach nourishment projects may be granted ten-year~~  
31 ~~extensions to allow for continuing project implementation. Renewals for maintenance of previously approved~~  
32 ~~dredging projects may be granted for periods not to exceed five years. For the purpose of this Rule, substantial~~  
33 ~~development shall be deemed to have occurred on a project if the permit holder can show that development has~~  
34 ~~progressed beyond basic site preparation, such as land clearing and grading, and construction has begun and is~~  
35 ~~continuing on the primary structure or structures authorized under the permit. For elevated structures in Ocean Hazard~~  
36 ~~Areas, substantial development begins with the placement of foundation pilings, and proof of the local building~~  
37 ~~inspector's certification that the installed pilings have passed a floor and foundation inspection. For residential~~

1 subdivisions, installation of subdivision roads consistent with an approved subdivision plat shall constitute substantial  
2 development.

3 (c) To request an extension pursuant to Paragraphs (a) and (b) of this Rule, the permit holder shall submit a signed  
4 and dated request containing the following:

5 (1) a statement of the completed and remaining work;

6 (2) a statement that there has been no change of plans since the issuance of the original permit other  
7 than changes that would have the effect of reducing the scope of the project, or previously approved  
8 permit modifications;

9 (3) notice of any change in ownership of the property to be developed and a request for transfer of the  
10 permit if appropriate; and

11 (4) a statement that the project is in compliance with all conditions of the current permit.

12 ~~(e)(d)~~ When an extension request For extension requests where substantial development has not ~~met the criteria of~~  
13 occurred in accordance with Paragraph (b) of this Rule, the Division of Coastal Management may circulate the request  
14 to the commenting State resource agencies along with a copy of the original permit application. Commenting State  
15 resource agencies will be given ~~three weeks~~ 30 days in which to comment on the extension request. Upon the  
16 expiration of the commenting period the Division of Coastal Management will notify the ~~applicant~~ permit holder of  
17 its actions on the extension request.

18 ~~(d)(e)~~ (e) Notwithstanding Paragraphs (b) and ~~(e)~~ (d) of this Rule, an extension request may be denied on making findings  
19 as required in either G.S. 113A-120 or G.S. 113-229(e). Changes in circumstances or in development standards shall  
20 be considered and applied by the Division of Coastal Management in making a decision on an extension request.

21 ~~(e)(f)~~ (f) The applicant for a major development extension request shall submit, with the request, a check or money order  
22 payable to the Department in the sum of one hundred dollars (\$100.00).

23 ~~(f) Modifications to extended permits may be considered pursuant to 15A NCAC 07J .0405.~~

24  
25 *History Note: Authority G.S. 113A-119; 113A-119.1; 113A-124(c)(8);*

26 *Eff. March 15, 1978;*

27 *Amended Eff. August 1, 2002; August 1, 2000; April 1, 1995; March 1, 1991; March 1, 1985;*

28 *November 1, 1984;*

29 *Readopted Eff. August 1, 2021;*

30 *Amended Eff. July 1, 2022.*

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .1201

**DEADLINE FOR RECEIPT: Friday, June 10, 2022**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Add oxford commas after “large-scale projects”, line 34, and “post-project surveys”, line 2.*

*Subparagraph (d)(2), how is relevancy determined as to “maps, tables, diagrams, studies or reports.”? Add an oxford comma after “studies”.*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: June 6, 2022

1 15A NCAC 07J .1201 is amended as published in 36:14 NCR 1233-1234 as follows:

2  
3 **SECTION .1200 – ~~STATIC AND VEGETATION LINE EXCEPTION~~ BEACH MANAGEMENT PLAN**  
4 **APPROVAL PROCEDURES**

5  
6 **15A NCAC 07J .1201 ~~REQUESTING THE STATIC LINE EXCEPTION~~ BEACH MANAGEMENT**  
7 **PLAN APPROVAL**

8 (a) A petitioner subject to a ~~static pre-project~~ vegetation line pursuant to 15A NCAC 07H .0305 may petition the  
9 Coastal Resources Commission ~~for an exception to the static vegetation line~~ to approve a Beach Management Plan in  
10 accordance with the provisions of this Section. A "petitioner" shall be defined as:

- 11 (1) Any local government;
- 12 (2) Any group of local governments involved in a regional beach fill ~~project~~; project; or
- 13 (3) Any qualified homeowner's association defined in G.S. 47F-1-103(3) that has the authority to  
14 approve the locations of structures on lots within the territorial jurisdiction of the association, and  
15 has jurisdiction over at least one mile of ocean ~~shoreline~~; or shoreline.
- 16 (4) ~~A permit holder of a large scale beach fill project.~~

17 (b) A petitioner shall be eligible to submit a request ~~for a static vegetation line exception to approve a Beach~~  
18 Management Plan after the completion of construction of the initial large-scale beach fill project(s) as defined in 15A  
19 NCAC 07H .0305 that required the creation of a ~~static pre-project~~ vegetation line(s). For a ~~static pre-project~~ vegetation  
20 line in existence prior to the effective date of this Rule, the award-of-contract date of the initial large-scale beach fill  
21 project, or the date of the aerial photography or other survey data used to define the ~~static pre-project~~ vegetation line,  
22 whichever is most recent, shall be used in lieu of the completion of construction date.

23 (c) ~~A static vegetation line exception request applies to the entire static vegetation line within the jurisdiction of the~~  
24 ~~petitioner, including segments of a static vegetation line that are associated with the same large scale beach fill project.~~  
25 ~~If multiple static vegetation lines within the jurisdiction of the petitioner are associated with different large scale beach~~  
26 ~~fill projects, then the static vegetation line exception in accordance with 15A NCAC 07H .0306 and the procedures~~  
27 ~~outlined in this Section shall be considered separately for each large scale beach fill project. A Beach Management~~  
28 Plan applies to all pre-project vegetation lines within the Ocean Hazard Area of the petitioner's jurisdiction.

29 (d) ~~A static vegetation line exception request shall be made in writing by the petitioner. A complete static vegetation~~  
30 ~~line exception request shall include the following: A complete Beach Management Plan shall consist of a~~  
31 comprehensive document with supporting appendices and data that includes the following:

- 32 (1) A ~~summary review~~ review of all beach fill projects in the area ~~for which the exception is being requested~~  
33 of the Beach Management Plan including the initial large-scale beach fill project associated with the  
34 ~~static pre-project~~ vegetation line, subsequent maintenance of the initial large-scale projects(s) and  
35 beach fill projects occurring prior to the initial large-scale projects(s). To the extent historical data  
36 allows, the summary shall include construction dates, contract award dates, volume of sediment

1 excavated, total cost of beach fill project(s), funding sources, maps, design schematics, pre-and post-  
2 project surveys and a project footprint;

- 3 (2) ~~Plans and related materials including reports, maps, tables and diagrams for the design and~~  
4 ~~construction of the initial large scale beach fill project that required the static vegetation line,~~  
5 ~~subsequent maintenance that has occurred, and planned maintenance needed to achieve a design life~~  
6 ~~providing no less than 30 years of shore protection from the date of the static line exception request.~~  
7 A review of the maintenance needed to achieve a design life of no less than 30 years of shore  
8 protection. The plan shall include anticipated maintenance event volume triggers and schedules,  
9 long-term volumetric sand needs, annual monitoring protocols, an analysis of the impacts or any  
10 erosion control structures, and any relevant maps, tables, diagrams, studies or reports. The plans and  
11 related materials shall be designed and prepared by the U.S. Army Corps of Engineers or persons  
12 meeting applicable State occupational licensing requirements for said work;
- 13 (3) Documentation, including maps, geophysical, and geological data, to delineate the planned location  
14 and volume of compatible sediment as defined in 15A NCAC 07H .0312 necessary to construct and  
15 maintain the large-scale beach fill project defined in Subparagraph (d)(2) of this Rule over its design  
16 life. This documentation shall be designed and prepared by the U.S. Army Corps of Engineers or  
17 persons meeting applicable State occupational licensing requirements for said work; and
- 18 (4) Identification of the financial resources or funding sources necessary to fund the large-scale beach  
19 fill ~~project over its design life.~~ project, over the project design life, such as a dedicated percentage  
20 of occupancy taxes, special tax districts, or anticipated federal funding.

21 (e) Public Comment Requirements. The local jurisdiction shall provide an opportunity for public comments on the  
22 Beach Management Plan prior to submission to the Coastal Resources Commission for approval. Written comments  
23 on the Beach Management Plan shall be submitted by the local jurisdiction to the Division along with the request to  
24 approve the Beach Management Plan.

25 ~~(e) (f) A static vegetation line exception request~~ A request to approve a Beach Management Plan shall be submitted  
26 to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written  
27 acknowledgement of the receipt of a completed ~~static vegetation line exception request~~, including notification of the  
28 date of the meeting at which the request will be considered by the Coastal Resources Commission, shall be provided  
29 to the petitioner by the Division of Coastal Management.

30 ~~(f) (g)~~ The Coastal Resources Commission shall consider a ~~static vegetation line exception request~~ request to approve  
31 a Beach Management Plan no later than the second scheduled meeting following the date of receipt of a complete  
32 request by the Division of Coastal Management, except when the petitioner and the Division of Coastal Management  
33 agree upon a later date.

34  
35 *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*  
36 *Eff. March 23, 2009;*  
37 *Amended Eff. April 1, 2016;*

1                    *Readopted Eff. September 1, 2021;*  
2                    *Amended Eff. July 1, 2022.*



**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .1202

**DEADLINE FOR RECEIPT: Friday, June 10, 2022**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Paragraph (a), there is an extra "This" at the end of line 6.*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: June 6, 2022

1 15A NCAC 07J .1202 is amended as published in 36:14 NCR 1234 as follows:

2  
3 **15A NCAC 07J .1202 REVIEW OF THE ~~STATIC LINE EXCEPTION~~ BEACH MANAGEMENT PLAN**  
4 **APPROVAL REQUEST**

5 (a) ~~The Division of Coastal Management shall prepare a written report of the static line exception request.~~ Petitioner  
6 shall provide a summary of the Beach Management Plan to be presented to the Coastal Resources Commission. This  
7 report shall include: This summary shall include all of the elements required in 15A NCAC 07J .1201.

8 (1) ~~A description of the area affected by the static line exception request;~~

9 (2) ~~A summary of the large scale beach fill project that required the static vegetation line as well as the~~  
10 ~~completed and planned maintenance of the project(s);~~

11 (3) ~~A summary of the evidence required for a static line exception; and~~

12 (4) ~~A recommendation to grant or deny the static line exception.~~

13 (b) The Division of Coastal Management shall provide the Commission a review of the Beach Management Plan  
14 including a recommendation to grant or deny the request. The Division shall provide the petitioner requesting the  
15 static line exception approval of a Beach Management Plan an opportunity to review the report recommendation  
16 prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be  
17 considered by the Coastal Resources Commission.

18  
19 *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*  
20 *Eff. March 23, 2009;*  
21 *Readopted Eff. September 1, 2021;*  
22 *Amended Eff. July 1, 2022.*

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .1203

**DEADLINE FOR RECEIPT: Friday, June 10, 2022**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Subparagraph (a)(1) should end with “; and”.*

*Because the text of subparagraph (a)(3) has been deleted, so should the “(3)”.*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: June 6, 2022

1 15A NCAC 07J .1203 is amended as published in 36:14 NCR 1234-1235 as follows:

2  
3 **15A NCAC 07J .1203 PROCEDURES FOR APPROVING ~~THE STATIC LINE EXCEPTION~~ A BEACH**  
4 **MANAGEMENT PLAN**

5 (a) At the meeting at which ~~the static line exception~~ approval of a Beach Management Plan is considered by the  
6 Coastal Resources Commission, the following shall occur:

7 (1) The ~~Division of Coastal Management~~ Petitioner shall orally present ~~the report~~ a summary of the  
8 Beach Management Plan described in 15A NCAC 07J .1202.

9 (2) ~~A representative for the petitioner may provide written or oral comments about the static line~~  
10 ~~exception request. The Chairman of the Coastal Resources Commission may limit the time allowed~~  
11 ~~for oral comments in open session based upon the number of speakers wishing to speak. The~~  
12 Division of Coastal Management shall orally present its review of the Beach Management Plan and  
13 its recommendation to grant or deny the approval request.

14 (3) ~~Additional parties may provide written or oral comments about the static line exception request. The~~  
15 ~~Chairman of the Coastal Resources Commission may limit the time allowed for oral comments in~~  
16 ~~open session based upon the number of speakers wishing to speak.~~

17 (b) The Coastal Resources Commission shall ~~authorize a static line exception request~~ approve a Beach Management  
18 Plan if the request contains the information required and meets the criteria presented in 15A NCAC 07J .1201(d)(1)  
19 through ~~(d)(4).~~ (d)(4), the Division of Coastal Management recommendation, and public comments on the Beach  
20 Management Plan submitted with the request to approve the Beach Management Plan. The final decision of the Coastal  
21 Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next  
22 scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days  
23 following the meeting at which the decision is reached.

24 (c) The decision to ~~authorize or deny a static line exception~~ approve or deny a Beach Management Plan is a final  
25 agency decision and is subject to judicial review in accordance with G.S. 113A-123.

26  
27 *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*  
28 *Eff. March 23, 2009;*  
29 *Readopted Eff. September 1, 2021;*  
30 *Amended Eff. July 1, 2022.*

1 15A NCAC 07J .1204 is amended as published in 36:14 NCR 1235-1236 as follows:

2  
3 **15A NCAC 07J .1204 REVIEW OF ~~THE LARGE SCALE BEACH FILL PROJECT AND APPROVED~~**  
4 **STATIC LINE EXCEPTIONS BEACH MANAGEMENT PLANS**

5 (a) Progress Reports. The petitioner that received ~~the static line exception~~ a Beach Management Plan approval shall  
6 provide a progress report to the Coastal Resources Commission every five years from date the ~~static line exception is~~  
7 ~~authorized.~~ Beach Management Plan is approved. The progress report shall address the criteria defined in 15A NCAC  
8 07J .1201(d)(1) through (d)(4) and be submitted in writing to the Director of the Division of Coastal Management,  
9 400 Commerce Avenue, Morehead City, NC 28557. The Division of Coastal Management shall provide the petitioner  
10 with written acknowledgement of the receipt of a completed progress report, including notification of the meeting date  
11 at which the report will be presented to the Coastal Resources Commission.

12 (b) The Coastal Resources Commission shall review a ~~static line exception authorized~~ Beach Management Plan  
13 approved under 15A NCAC 07J .1203 every five years from the initial authorization in order to renew its findings for  
14 the conditions defined in ~~15A NCAC 07J .1201(d)(2) through (d)(4).~~ 15A NCAC 07J .1201(d) through (e). The  
15 Coastal Resources Commission shall also consider the following conditions:

16 (1) ~~Design changes to the initial large scale beach fill project defined in 15A NCAC 07J .1201(d)(1)~~  
17 Updates to the Beach Management Plan, including performance of past projects and maintenance  
18 events, changes in conditions, and design changes to future projects, provided that the changes are  
19 designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State  
20 occupational licensing requirements for the work;

21 (2) Design changes to the location and volume of compatible sediment, as defined by 15A NCAC 07H  
22 .0312, necessary to construct and maintain the large-scale beach fill project defined in 15A NCAC  
23 07J .1201(d)(2), including design changes defined in this Rule provided that the changes have been  
24 designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State  
25 occupational licensing requirements for the work; and

26 (3) Changes in the financial resources or funding sources necessary to fund the large-scale beach fill  
27 project(s) defined in 15A NCAC 07J .1201(d)(2). If the project has been amended to include design  
28 changes defined in this Rule, then the Coastal Resources Commission shall consider the financial  
29 resources or funding sources necessary to fund the changes.

30 (4) Local governments with an unexpired Static Line Exception approved by the Commission may  
31 petition the Commission for approval of a Beach Management Plan by supplementing information  
32 required under the Static Line Exception to be compliant with the provisions of 15A NCAC 07J  
33 .1200 prior to or upon the expiration of the previously approved Static Line Exception.

34 (c) ~~The Division of Coastal Management shall prepare a written~~ Petitioner shall orally present a summary of the  
35 progress report ~~and present it to~~ the Coastal Resources Commission no later than the second scheduled meeting  
36 following the date the report was received, except when a later meeting is agreed upon by the local government or  
37 community submitting the progress report and the Division of Coastal Management. ~~This written summary~~ The

1 Division of Coastal Management shall include a recommendation from the Division of Coastal Management provide  
2 the Coastal Resources Commission with a review and recommendation of the progress report on whether the  
3 conditions defined in 15A NCAC 07J .1201(d)(1) through (d)(4) have been met. The petitioner submitting the progress  
4 report shall be provided an opportunity to review the ~~written summary~~ recommendation prepared by the Division of  
5 Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources  
6 Commission.

7 ~~(d) The following shall occur at the meeting at which the Coastal Resources Commission reviews the static line~~  
8 ~~exception progress report:~~

9 (1) ~~The Division of Coastal Management shall orally present the written summary of the progress report~~  
10 ~~as defined in this Rule.~~

11 (2) ~~A representative for the petitioner may provide written or oral comments relevant to the static line~~  
12 ~~exception progress report. The Chairman of the Coastal Resources Commission may limit the time~~  
13 ~~allowed for oral comments in open session based upon the number of speakers wishing to speak.~~

14 (3) ~~Additional parties may provide written or oral comments relevant to the static line exception~~  
15 ~~progress report. The Chairman of the Coastal Resources Commission may limit the time allowed~~  
16 ~~for oral comments in open session based upon the number of speakers wishing to speak.~~

17  
18 *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*  
19 *Eff. March 23, 2009;*  
20 *Readopted Eff. September 1, 2021;*  
21 *Amended Eff. July 1, 2022.*

1 15A NCAC 07J .1205 is amended as published in 36:14 NCR 1236 as follows:

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**15A NCAC 07J .1205    REVOCATION AND EXPIRATION OF ~~THE STATIC LINE EXCEPTION~~  
BEACH MANAGEMENT PLAN APPROVAL**

(a) ~~The static line exception~~ Beach Management Plan approval shall be revoked if the Coastal Resources Commission determines, after the review of the petitioner's progress report identified in 15A NCAC 07J .1204, that any of the criteria under which the ~~static line exception~~ Beach Management Plan is authorized, as defined in ~~15A NCAC 07J .1201(d)(2)~~ 15A NCAC 07J .1201(d)(1) through (d)(4), are not being met.

~~(b) The static line exception shall expire at the end of the design life of the large scale beach fill project defined in 15A NCAC 07J .1201(d)(2), including subsequent design changes to the project as defined in 15A NCAC 07J .1204(b).~~

~~(c)~~ (b) In the event a progress report is not received by the Division of Coastal Management five years from either the ~~static line exception~~ initial approval of the Beach Management Plan or the previous progress report, ~~the static line exception~~ the Beach Management Plan approval shall be revoked automatically at the end of the five-year interval defined in 15A NCAC 07J .1204(b) for which the progress report was not received.

~~(d)~~ (c) The revocation or expiration of a ~~static line exception~~ Beach Management Plan approval shall be a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

*History Note:    Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;  
                          Eff. March 23, 2009;  
                          Readopted Eff. September 1, 2021;  
                          Amended Eff. July 1, 2022.*

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .1206

**DEADLINE FOR RECEIPT: Friday, June 10, 2022**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*The three instances of "CRC approved" seems unnecessary. Delete.*

*Add an oxford comma after "beach fill project" on line 11.*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: June 6, 2022



1 15A NCAC 07J .1206 is amended as published in 36:14 NCR 1236 as follows:

2

3 **15A NCAC 07J .1206 LOCAL GOVERNMENTS AND COMMUNITIES WITH ~~STATIC VEGETATION~~**  
4 **~~LINES AND STATIC LINE EXCEPTIONS~~ APPROVED BEACH MANAGEMENT**  
5 **PLANS**

6 A list of ~~static vegetation lines in place for petitioners~~ CRC approved Beach Management Plans and the conditions  
7 under which the ~~static pre-project~~ vegetation lines exist, including the date(s) the static pre-project vegetation line was  
8 defined, shall be maintained by the Division of Coastal Management. A list of ~~static line exceptions in place for~~  
9 ~~petitioners~~ CRC approved Beach Management Plans and the conditions under which the ~~exceptions~~ Plans exist,  
10 including the date the ~~exception was granted,~~ Plan was approved, the dates the progress reports were received, the  
11 design life of the large-scale beach fill project and the potential expiration dates for the ~~static line exception,~~ Beach  
12 Management Plans shall be maintained by the Division of Coastal Management. Both the ~~static pre-project~~ vegetation  
13 line list and the static line exception CRC approved Beach Management Plan list shall be available for inspection at  
14 the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

15

16 *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*

17 *Eff. March 23, 2009;*

18 *Readopted Eff. September 1, 2021;*

19 *Amended Eff. July 1, 2022.*

1 15A NCAC 07J .1301 is repealed as published in 36:14 NCR 1236 as follows:

2

3

**SECTION .1300 – DEVELOPMENT LINE PROCEDURES**

4

**15A NCAC 07J .1301 REQUESTING THE DEVELOPMENT LINE**

6

7 *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*

8 *Eff. April 1, 2016;*

9 *Amended Eff. September 1, 2017;*

10 *Readopted Eff. September 1, 2021;*

11 *Repealed Eff. July 1, 2022.*

1 15A NCAC 07J .1302 is repealed as published in 36:14 NCR 1236 as follows:

2

3 **15A NCAC 07J .1302 PROCEDURES FOR APPROVING THE DEVELOPMENT LINE**

4

5 *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-123; 113A-124;*

6 *Eff. April 1, 2016;*

7 *Readopted Eff. September 1, 2021;*

8 *Repealed Eff. July 1, 2022.*

1 15A NCAC 07J .1303 is repealed as published in 36:14 NCR 1236 as follows:

2

3 **15A NCAC 07J .1303 LOCAL GOVERNMENTS AND COMMUNITIES WITH DEVELOPMENT LINES**

4

5 *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*

6 *Eff. April 1, 2016;*

7 *Readopted Eff. September 1, 2021;*

8 *Repealed Eff. July 1, 2022.*

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07K .0208

**DEADLINE FOR RECEIPT: Friday, June 10, 2022**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Paragraph (b), what is a “generally shore perpendicular access”? Is there a better way to describe what is required or allowed?*

*Paragraph (g), add an oxford comma after “local land use plans”.*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: June 6, 2022

1 15A NCAC 07K .0208 is amended as published in 36:13 NCR 1128 as follows:

2  
3 **15A NCAC 07K .0208 SINGLE FAMILY RESIDENCES EXEMPTED**

4 (a) All single family residences constructed within the Coastal Shorelines Area of Environmental Concern that are  
5 more than 40 feet landward of normal high water or normal water level, and involve no land disturbing activity within  
6 the 40 feet buffer area are exempted from the CAMA permit requirement as long as this exemption is consistent with  
7 all other applicable CAMA permit standards and local land use plans and rules in effect at the time the exemption is  
8 granted.

9 (b) This exemption allows for the construction of a generally shore perpendicular access to the water, provided that  
10 the access shall be no wider than six feet. The access may be constructed out of materials such as wood, composite  
11 material, gravel, paver stones, concrete, brick, or similar materials. Any access constructed over wetlands shall be  
12 elevated at least three feet above any wetland substrate as measured from the bottom of the decking.

13 (c) Within the AEC for estuarine shorelines contiguous to waters classified as Outstanding Resource Waters (ORW),  
14 no CAMA permit shall be required if the proposed development is a single-family residence that has a built upon area  
15 of 25 percent or less and is at least 40 feet from waters classified as ORW.

16 (d) Before beginning any work under this exemption, the CAMA local permit officer or the Department of  
17 Environmental Quality representative shall be notified of the proposed activity to allow on-site review. Notification  
18 may be by telephone at (252) 808-2808, in person, or in writing to the North Carolina Division of Coastal  
19 Management, 400 Commerce Ave., Morehead City, NC 28557. Notification shall include:

- 20 (1) the name, address, and telephone number of the landowner and the location of the work, including  
21 the county, nearest community, and water body; and  
22 (2) the dimensions of the proposed project, including proposed landscaping and the location of normal  
23 high water or normal water level.

24 (e) In eroding areas, this exemption shall apply only when the local permit officer has determined that the house has  
25 been located the maximum feasible distance back on the lot but not less than forty feet.

26 (f) Construction of the structure authorized by this exemption shall be completed by December 31 of the third year  
27 of the issuance date of this exemption.

28 (g) The elevation of existing structures within the Coastal Shorelines AEC is exempt from CAMA permit  
29 requirements as long as the structure is elevated entirely within the existing footprint and is consistent with all other  
30 applicable permit standards, local land use plans and rules in effect at the time the exemption is granted.

31  
32 *History Note: Authority G.S. 113A-103(5)c;*

33 *Eff. November 1, 1984;*

34 *Amended Eff. February 1, 2019; May 1, 2015; December 1, 2006; December 1, 1991; May 1, 1990;*

35 *October 1, 1989;*

36 *Readopted Eff. August 1, 2021;*

37 *Amended Eff. July 1, 2022.*

1 15A NCAC 07M .0301 is repealed as published in 36:13 NCR 1128 as follows:

2

3

**SECTION .0300 - SHOREFRONT ACCESS POLICIES**

4

**15A NCAC 07M .0301 DECLARATION OF GENERAL POLICY**

6

7 *History Note: Authority G.S. 113A-124; 113A-134.1; 113A-134.3;*

8 *Eff. March 1, 1979;*

9 *Amended Eff. February 1, 2009; January 1, 1998; March 1, 1988; March 1, 1985; July 1, 1982;*

10 *Readopted Eff. September 1, 2021;*

11 *Repealed Eff. July 1, 2022.*

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .0302

**DEADLINE FOR RECEIPT: Friday, June 10, 2022**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*The two rules listed on line 5 should be in sequential order.*

*Item (1), delete "as described".*

*Item (7), line 15, should there be a comma after "Tier 1 counties"?*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: June 6, 2022



1 15A NCAC 07M .0302 is amended as published in 36:13 NCR 1128-1129 as follows:

2  
3 **15A NCAC 07M .0302 DEFINITIONS**

4 As used in this Section, the Public Beach and Coastal Waterfront Access Program is to provide public access to the  
5 public trust beaches and waters as defined in 15A NCAC 07H .0305(a)(1) and 15A NCAC 07H .0207(a) in the 20  
6 coastal counties described in G.S. 113A-103(2).

7 (1) "Beach" is defined as described in 15A NCAC 07H .0305(a)(1).

8 (2) "Coastal Waterfront Access" includes the acquisition and improvement of properties located in the  
9 20-county area under the Coastal Area Management Act (CAMA) jurisdiction as described in G.S.  
10 113A-103(2) that are adjacent or proximate to coastal waterways to which the public has rights of  
11 access or public trust rights.

12 ~~(3) "Handicapped Accessible" is defined as meeting the standards of the State Building Code for~~  
13 ~~handicapped accessibility.~~

14 ~~(4) "Improvements" are facilities that are added to promote public access at an access site. Common~~  
15 ~~improvements include dune crossovers, piers, boardwalks, litter receptacles, parking areas,~~  
16 ~~restrooms, gazebos, boat ramps, canoe/kayak launches, bicycle racks, and foot showers.~~

17 ~~(5) "Inlet Beach Access" includes the acquisition and improvement of properties located within Inlet~~  
18 ~~Hazard Areas as defined in 15A NCAC 07H .0304(2).~~

19 ~~(6) "Local Access Sites" include those public access points that offer no facilities. These accessways~~  
20 ~~provide only a dune crossover or pier, if needed, litter receptacles, and public access signs. Vehicle~~  
21 ~~parking is not available at these access sites. However, bicycle racks may be provided by local~~  
22 ~~governments.~~

23 ~~(7) "Maintenance" is the upkeep and repair of public access sites and their facilities in such a manner~~  
24 ~~that public health and safety is ensured. Where the local government uses or has used access funds~~  
25 ~~administered by the Division of Coastal Management (DCM), the local government shall provide~~  
26 ~~operation and maintenance of the facility for the useful life of that facility as set forth in the~~  
27 ~~individual grant contract.~~

28 ~~(8) "Multi regional Access Sites" are larger than regional accessways but smaller than State parks. Such~~  
29 ~~facilities may be undertaken and constructed with the involvement and support of State and local~~  
30 ~~government agencies. Multi regional accessways provide parking for a minimum of 80 vehicles,~~  
31 ~~restrooms with indoor showers and changing rooms, and concession stands.~~

32 ~~(9) "Neighborhood Access Sites" includes those public access areas offering parking for 5 to 25~~  
33 ~~vehicles, a dune crossover or pier, litter receptacles, and public access signs. Restroom facilities~~  
34 ~~may be installed.~~

35 ~~(10)~~ (3) "Ocean Beach Access" includes the acquisition and improvement of properties adjacent or  
36 proximate to the Atlantic Ocean for parking and public passage to the oceanfront.

37 ~~(11)~~(4) "Public Trust Areas" is defined in 15A NCAC 07H .0207(a).

1 ~~(12) "Regional Access Sites" are of such size and offer such facilities that they serve the public from~~  
2 ~~throughout an island or community including day visitors. These sites provide parking for 25 to 80~~  
3 ~~vehicles, restrooms, a dune crossover, pier, foot showers, litter receptacles, and public access signs.~~

4 ~~(13) "Urban Waterfront Access Projects" improve public access to deteriorating urban waterfronts. Such~~  
5 ~~projects include the establishment or rehabilitation of boardwalk areas, shoreline stabilization~~  
6 ~~measures such as the installation or rehabilitation of bulkheads, and the placement or removal of~~  
7 ~~pilings for the purpose of public safety and increased access and use of the urban waterfront.~~

8 (5) A "Local Waterfront Access Plan" identifies access needs and opportunities for public access,  
9 determines access and facility requirements, establishes standards, develops project design plans or  
10 guidelines, establishes priorities, considers financial resource availability (such as grants, impact  
11 fees, or occupancy taxes) and construction timing, and provides a system for evaluation of the plan.

12 (6) "Certified CAMA Land Use Plan" is defined in 15A NCAC 07B. A local government may identify  
13 access needs, develop a local waterfront access plan, and develop local policies to pursue access  
14 funding through its land use plan.

15 (7) "Tier 1 communities" include Tier 1 counties as determined annually by the North Carolina  
16 Department of Commerce as outlined in G.S. 143B-437.08, and the counties respective  
17 municipalities. The Division shall use the Tier 1 designation to encourage economic activity in  
18 economically distressed communities.

19  
20 *History Note: Authority G.S. 113A-124; 113A-134.3;*

21 *Eff. March 1, 1979;*

22 *Amended Eff. February 1, 2009; January 1, 1998; March 1, 1988; March 1, 1985; July 1, 1982;*

23 *Readopted Eff. September 1, 2021;*

24 *Amended Eff. July 1, 2022.*

1 15A NCAC 07M .0303 is repealed as published in 36:13 NCR 1129 as follows:

2

3 **15A NCAC 07M .0303 STANDARDS FOR PUBLIC ACCESS**

4

5 *History Note: Authority G.S. 113A-124; 113A-134.1; 113A-134.3; 153A-277(a); 160A-314(a);*

6 *Eff. March 1, 1979;*

7 *Amended Eff. March 1, 1988; March 1, 1985; July 1, 1982;*

8 *RRC Objection due to lack of necessity and unclear language Eff. October 17, 1991;*

9 *Amended Eff. February 1, 2009; August 1, 2007; January 1, 1998; March 1, 1992;*

10 *Readopted Eff. September 1, 2021;*

11 *Repealed Eff. July 1, 2022.*

1 15A NCAC 07M .0306 is repealed as published in 36:16 NCR 1129 as follows:

2

3 **15A NCAC 07M .0306 LOCAL GOVERNMENT AND STATE INVOLVEMENT IN ACCESS**

4

5 *History Note: Authority G.S. 113A-124; 113A-134.3;*

6 *Eff. January 1, 1998;*

7 *Amended Eff. February 1, 2009; August 1, 2007;*

8 *Readopted Eff. September 1, 2021;*

9 *Repealed Eff. July 1, 2022.*

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .0307

**DEADLINE FOR RECEIPT: Friday, June 10, 2022**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Paragraph (b), move “Coastal Resources Commission (CRC)” up from line 12 to line 11, where “Commission” is first used. Then use “Commission” or “CRC” after that.*

*Paragraph (d), delete “of this Rule from the DCM” as unnecessary.*

*Subparagraphs (e)(1) through (7) and (g)(1) through (10) should not begin with a capital letter unless the item is a proper noun.*

*Add a comma after “replacement” in subparagraph (e)(4).*

*Subparagraph (e)(7), last sentence, should read: “Repair and maintenance does not include activities such as trash removal, grounds keeping, custodial services, or local government staff salaries.*

*Combine subparagraphs (g)(6) and (7) for clarity and consistency.*

*Subparagraph (h), line 6, should it be “Match requirements” or “Matching requirements”?*

*Subparagraph (j), would it be clearer if it began, “Each phase of multi-phase projects shall be considered...”*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: June 6, 2022

1 15A NCAC 07M .0307 is amended as published in 36:13 NCR 1129-1131 as follows:

2  
3 **15A NCAC 07M .0307 ~~ELIGIBILITY, SELECTION CRITERIA AND MATCHING REQUIREMENTS~~**  
4 **PUBLIC BEACH AND COASTAL WATERFRONT ACCESS PROGRAM**

5 (a) The Division of Coastal Management (DCM) has primary responsibility for administering the Public Beach and  
6 Coastal Waterfront Access Program. Subject to the availability of funds, the DCM shall annually solicit pre-  
7 application proposals from local governments and shall select competitive projects for final application submittal.  
8 Projects from these final applications shall be selected for funding based on criteria in Paragraph (h) of this Rule.

9 (b) The DCM may use available funds on a non-competitive basis to plan for and provide public access through  
10 acquisition and improvements. Prior to expending the funds, the DCM shall hold a public meeting or hearing at a  
11 regularly scheduled meeting of the Commission to discuss its proposal. Members of the public shall be invited to  
12 comment to the Coastal Resources Commission (CRC) for 60 days prior to the expenditure of non-competitive money  
13 by the DCM.

14 ~~(c)~~ (c) Local governments have responsibility for the selection of public access sites within their jurisdiction. Any  
15 local government in the 20-county coastal region having ocean beaches or estuarine or public trust waters within its  
16 jurisdiction may apply for access funds for the ~~development of beach or coastal waterfront access facilities with~~  
17 ~~associated improvements. Boat ramps, or canoe/kayak launch areas may also be developed provided that the access~~  
18 ~~facilities incorporate pedestrian access to coastal waters.~~ acquisition and development of beach or coastal waterfront  
19 access facilities.

20 (d) Prior to submitting its final application for a Public Beach and Coastal Waterfront Access grant in accordance  
21 with Paragraph (a) of this Rule from the DCM, the local government shall hold a public meeting or hearing at a  
22 regularly scheduled meeting of the Commission to discuss its proposal. The local government shall consider public  
23 comments prior to its decision to apply for funds from the State.

24 ~~(b)(c)~~ (e) Eligible projects include:

- 25 (1) Land acquisition, including acquisition of unbuildable lots as described in G.S. 113A-134.3(a);
- 26 (2) ~~Local access sites;~~ Development of improvements at new or existing sites that provide public access,  
27 such as dune crossovers, piers, boardwalks, parking areas, restrooms, showers, benches, litter  
28 receptacles, and bicycle racks;
- 29 (3) ~~Neighborhood access sites or improvements;~~ Development of improvements to public access at  
30 deteriorating urban waterfronts. Such projects include the establishment or rehabilitation of  
31 boardwalk areas, shoreline stabilization measures such as the installation or rehabilitation of  
32 bulkheads, and the placement or removal of pilings for the purpose of public safety and increased  
33 access and use of the urban waterfront;
- 34 (4) ~~Regional access sites or improvements;~~
- 35 (5) ~~Multi regional access sites or improvements;~~
- 36 (6) ~~Urban waterfront development access projects;~~
- 37 (7) ~~(4) Reconstruction~~ Reconstruction, replacement or relocation of existing, damaged facilities;

1 ~~(8) Reconstruction or replacement of facilities; and~~

2 ~~(9) (5) Offsite parking areas servicing access sites within the local government's jurisdiction.~~ jurisdiction;

3 ~~(6) Boat ramps and canoe/kayak launch areas provided that the public access facility incorporates~~  
4 ~~pedestrian access to coastal waters; or~~

5 ~~(7) Maintenance of previously funded access sites. This project category is available only to Tier 1~~  
6 ~~communities. Such projects include repair and maintenance of access site facilities and amenities to~~  
7 ~~ensure public health and safety. Repair and maintenance does not include activities such as trash~~  
8 ~~removal, grounds keeping, or custodial services, nor can it be used to pay local government staff~~  
9 ~~salaries.~~

10 (f) All projects must meet the standards of handicapped accessibility for individuals with disabilities according to the  
11 North Carolina Building Code. Exceptions may be granted where site characteristics impede accessibility  
12 improvements.

13 ~~(e)~~ (g) The following criteria shall be used to select projects that may receive financial assistance:

14 (1) The applicant demonstrates a need for the project due to a high demand for public access and limited  
15 availability within the local government ~~jurisdiction.~~ jurisdiction;

16 (2) The project is identified in the ~~local land use plan~~ certified CAMA Land Use Plan or local access  
17 plan;

18 (3) The applicant has not received previous assistance from the Public Beach and Coastal Waterfront  
19 Access Program grant program or the applicant has received assistance and demonstrated its ability  
20 to complete previous projects with funds from the grant program;

21 (4) The applicant's commitment of matching funds exceeds the required local share of the total project  
22 cost provided in ~~Paragraphs (d) and (e)~~ Paragraph (h) of this Rule;

23 (5) The project proposal includes multiple funding sources; ~~and~~

24 (6) The project location includes donated land with physical limitations, or it has been deemed  
25 unbuildable as described in G.S. 113A-134.3(a).

26 ~~(7)~~ Priority shall be given to the acquisition of lands that meet G.S. 113A-134.3(a);

27 ~~(8)~~ The project acquires land for future access improvements;

28 ~~(9)~~ The project creates handicapped accessible facilities at new access sites, adds handicapped  
29 accessible facilities to existing sites, or replaces deteriorating facilities; and

30 ~~(10)~~ The project's location is within a Tier 1 community.

31 ~~(d) The North Carolina Department of Commerce's Tier designations, as outlined by G.S. 143B-437.08 shall be used~~  
32 ~~to determine the economic status of counties. Land acquisition, including acquisition of unbuildable lots, shall include~~  
33 ~~a local government contribution of at least 15 percent of the acquisition cost, except for Tier 1 and Tier 2 counties as~~  
34 ~~designated by the N.C. Department of Commerce, and their respective municipalities, which shall have a contribution~~  
35 ~~of at least 10 percent. At least one half of the local contribution shall be cash match, the remainder may be in-kind~~  
36 ~~match.~~

1 ~~(e) Local government contributions for access site improvements shall be at least 25 percent of the project costs,~~  
2 ~~except for Tier 1 and Tier 2 designated counties and their respective municipalities, which shall have a local~~  
3 ~~government contribution of at least 10 percent of the project costs. At least one half of the local contribution shall be~~  
4 ~~cash match; the remainder may be in-kind match.~~

5 (h) The applicant's matching requirements are based on project type and their designations as a Tier 1 community.  
6 March requirements are as follows:

7 (1) Local government contributions for land acquisition shall be at least 15 percent of the acquisition  
8 cost, except for Tier 1 communities which shall have a local government contribution of at least 10  
9 percent of the project cost. At least one-half of the local contribution shall be cash match, the  
10 remainder may be in-kind match.

11 (2) Local government contributions for access site improvements shall be at least 25 percent of the  
12 project costs, except for Tier 1 communities which shall have a local government contribution of at  
13 least 10 percent of the project costs. At least one-half of the local contribution shall be cash match,  
14 the remainder may be in-kind match.

15 (3) Local government contributions for maintenance of previously funded access sites shall be at least  
16 10 percent of the maintenance project costs. At least one-half of the local government contribution  
17 shall be cash match, the remainder may be in-kind match. This project type is only available to Tier  
18 1 communities.

19 ~~(i)~~ Federal and other State funds may be used as the local government cash contribution, provided such funds are  
20 not already being used as matching funds for other State programs.

21 ~~(j)~~ Multi-phase projects shall be considered on their own merits within the pool of applications being reviewed in  
22 any year.

23 (k) Projects selected for funding may not begin until the Department of Environmental Quality and grant recipient  
24 sign a contract. An exception may be granted for land acquisition projects when a waiver has been requested by the  
25 applicant in writing and approved by the Division of Coastal Management. A waiver shall be in effect for 18 months  
26 from the date of approval. A project receiving a waiver shall not receive preferential treatment in funding decisions.

27  
28 *History Note: Authority G.S. 113A-124; 113A-134.3;*  
29 *Eff. January 1, 1998;*  
30 *Amended Eff. February 1, 2009; September 1, 2007; August 1, 2000;*  
31 *Readopted Eff. September 1, 2021;*  
32 *Amended Eff. July 1, 2022.*



1 15A NCAC 07M .0308 is repealed as published in 36:13 NCR 1131 as follows:

2

3 **15A NCAC 07M .0308 PUBLIC INVOLVEMENT/NOTICE**

4

5 *History Note: Authority G.S. 113A-124; 113A-134.3;*

6 *Eff. January 1, 1998;*

7 *Readopted Eff. September 1, 2021;*

8 *Repealed Eff. July 1, 2022.*

1 15A NCAC 07M .0310 is adopted as published in 36:13 NCR 1131 as follows:

2  
3 **15A NCAC 07M .0310 STANDARDS FOR PUBLIC ACCESS**

4 (a) Public access projects funded through the Public Beach and Coastal Waterfront Access program shall be  
5 consistent with public access policies contained in the local government's land use plan as required under 15A  
6 NCAC 07B .0702(d)(2)(A), its local waterfront access plan, or a local recreation plan that addresses public access.

7 (b) Land acquired with Public Beach and Coastal Waterfront Access program funds shall be dedicated in perpetuity  
8 for public access and benefit of the general public, and the dedication shall be recorded in the local Register of  
9 Deeds by the grantee. Any lease or easement agreement shall extend at least 25 years. If land acquired or improved  
10 with Public Beach and Coastal Waterfront Access Program grant funds is sold or otherwise disposed of, the local  
11 government shall reimburse the State at a percentage equal to the percentage of grant funds provided for the original  
12 purchase or improvement, at current market value at the time of the sale or disposition.

13 (c) Local governments that receive or have received funding through this grant program shall operate and maintain  
14 the public access sites and their facilities in such a manner that public health and safety is ensured for the useful life  
15 of that facility as set forth in the individual grant contract.

16 (d) Local governments with public access sites funded by the Division of Coastal Management pursuant to G.S.  
17 113A-134.3 may charge user fees as long as those fees are used exclusively for the operation, maintenance, and  
18 enhancement of existing public access sites, including trash removal, law enforcement and public safety, beach  
19 nourishment projects or the provision of new public access sites through acquisition or easement. Local  
20 governments shall prepare annual accounting reports for fees generated by Public Beach and Coastal Waterfront  
21 Access Program funded access sites and shall make the report available upon request. Any local government that has  
22 not made the most recent required accounting report available shall not receive further funding under this program  
23 until the inconsistency is corrected.

24  
25 *History Note: Authority G.S. 113A-124; 113A-134.1; 113A-134.3; 153A-277(a); 160A-314(a);*

26 *Eff. July 1, 2022.*